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# PENNSYLVANIA BULLETIN

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Department of Health's  
Managed Care Organizations;  
Quality Health Care  
Accountability and Protection  
and the Insurance Department's  
Health Maintenance  
Organizations; Quality Health  
Care Accountability and  
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Volume 28  
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State Ethics Commission  
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**Latest Pennsylvania Code Reporter  
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**No. 287, October 1998**

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**PENNSYLVANIA**



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# READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

## ***Pennsylvania Bulletin***

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published every week and includes a table of contents. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. First, it is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, repeal or emergency action must be published in the *Pennsylvania Bulletin*. Further, agencies proposing changes to the codified text do so in the *Pennsylvania Bulletin*.

Second, the *Pennsylvania Bulletin* also publishes: Governor's Executive Orders; State Contract Notices; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

The text of certain documents published in the *Pennsylvania Bulletin* is the only valid and enforceable text. Courts are required to take judicial notice of the *Pennsylvania Bulletin*.

## **Adoption, Amendment or Repeal of Regulations**

Generally an agency wishing to adopt, amend or repeal regulations must first publish in the *Pennsylvania Bulletin* a Notice of Proposed Rulemaking. There are limited instances where the agency may omit the proposal step; they still must publish the adopted version.

The Notice of Proposed Rulemaking contains the full text of the change, the agency contact person, a fiscal note required by law and background for the action.

The agency then allows sufficient time for public comment before taking final action. An adopted proposal must be published in the *Pennsylvania Bulletin* before it can take effect. If the agency

wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must re-propose.

## **Citation to the *Pennsylvania Bulletin***

Cite material in the *Pennsylvania Bulletin* by volume number and page number. Example: Volume 1, *Pennsylvania Bulletin*, page 801 (short form: 1 Pa.B. 801).

## ***Pennsylvania Code***

The *Pennsylvania Code* is the official codification of rules and regulations issued by Commonwealth agencies and other statutorily authorized documents. The *Pennsylvania Bulletin* is the temporary supplement to the *Pennsylvania Code*, printing changes as soon as they occur. These changes are then permanently codified by the *Pennsylvania Code Reporter*, a monthly, loose-leaf supplement.

The *Pennsylvania Code* is cited by title number and section number. Example: Title 10 *Pennsylvania Code*, § 1.1 (short form: 10 Pa.Code § 1.1).

Under the *Pennsylvania Code* codification system, each regulation is assigned a unique number by title and section. Titles roughly parallel the organization of Commonwealth government. Title 1 *Pennsylvania Code* lists every agency and its corresponding *Code* title location.

## **How to Find Documents**

Search for your area of interest in the *Pennsylvania Code*.

The *Pennsylvania Code* contains, as Finding Aids, subject indexes for the complete *Code* and for each individual title, a list of Statutes Used As Authority for Adopting Rules and a list of annotated cases. Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

The *Pennsylvania Bulletin* also publishes a quarterly List of Pennsylvania Code Sections Affected which lists the regulations in numerical order, followed by the citation to the *Pennsylvania Bulletin* in which the change occurred.

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### Printing Format

Material proposed to be added to an existing rule or regulation is printed in **bold face** and material proposed to be deleted from such a rule or regulation is enclosed in brackets [ ] and printed in **bold face**. Asterisks indicate ellipsis of *Pennsylvania Code* text retained without change. Proposed new or additional regulations are printed in ordinary style face.

### Fiscal Notes

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires that the Office of Budget prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions or authorities receiving money from the State Treasury stating whether the proposed action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions; that the fiscal note be published in the *Pennsylvania Bulletin* at the same time as the proposed change is advertised; and that the fiscal note shall provide the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the five succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the five succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The required information is published in the foregoing order immediately following the proposed change to which it relates; the omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years; in that order, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years, in that order. In item (8) the recommendation, if any, made by the Secretary of Budget is published with the fiscal note. See 4 Pa. Code § 7.231 *et seq.* Where “no fiscal impact” is published, the statement means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended.

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# List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 1998.

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## **Part II**

This part contains the  
Department of Health's Managed Care  
Organizations; Quality Health Care Accountability  
and Protection and the Insurance Department's  
Health Maintenance Organizations; Quality Health  
Care Accountability and Protection

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# PENNSYLVANIA

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# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

### PART I. GENERAL

#### [234 PA. CODE CH. 1100]

#### Order Adopting Rule 1107 and Amending Rules 1104 and 1106; No. 238; Criminal Procedural Rules Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the September 18, 1998 adoption of new Rule of Criminal Procedure 1107 (Juror Information Questionnaire) and correlative amendments to Rules 1104 (Juror Qualification Form, Lists of Trial Jurors, and Challenge to the Array) and 1106 (Examination and Challenges of Trial Jurors) that mandate the use of a standardized juror information questionnaire in all criminal cases. The Final Report follows the Court's Order.

#### Order

*Per Curiam:*

Now, this 18th day of September, 1998, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 27 Pa.B. 5744 (November 1, 1997), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 700-701), with a Final Report to be published with this Order:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Rule of Criminal Procedure 1107 is adopted, and Rules 1104 and 1106 are amended, all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 1999.

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1100. TRIAL

**Rule 1104. Juror Qualification Form,** Lists of Trial Jurors, and Challenge to the Array.

**[(a)] (A)** The officials designated by law to select persons for jury service shall **[prepare, publish and post such lists of the names of persons to serve as jurors as provided by law.]**

**(1)** devise, distribute, and maintain juror qualification forms as provided by law;

**(2)** prepare, publish, and post lists of the names of persons to serve as jurors as provided by law; and

**(3)** upon the request of the attorney for the Commonwealth or the defendant's attorney, furnish a list containing the names of prospective jurors summoned to try the case together with copies of the juror qualification forms returned by such prospective jurors.

**[(b)] (B)** Unless opportunity did not exist prior thereto, a challenge to the array shall be made not later than **[five] 5** days before the first day of the week the case is listed for trial of criminal cases for which the jurors have been summoned and not thereafter, and shall be in writing, specifying the facts constituting the ground for the challenge.

**[(c)] (C)** A challenge to the array may be made only on the ground that the jurors were not selected, drawn, or summoned substantially in accordance with law.

**Official Note:** Adopted January 24, 1968, effective August 1, 1968[.]; Comment revised January 28, 1983, effective July 1, 1983[.]; **amended September 15, 1993, effective January 1, 1994; the September 15, 1993 amendments suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order amending Rule 1104 is superseded by the September 18, 1998 Order, and Rule 1104 is amended September 18, 1998, effective July 1, 1999.**

#### Comment

The qualification, selection, and summoning of prospective jurors, as well as related matters, are generally dealt with in Chapter 45, Subchapters A—C, of the Judicial Code[.], 42 Pa.C.S. §§ 4501—4503, 4521—4526, 4531—4532[ (1981) ]. “Law” as used in paragraph **[(c)] (C)** of this rule is intended to include these Judicial Code provisions. However, paragraphs **[(b)] (B)** and **[(c)] (C)** of this rule are intended to supersede the procedures set forth in Section 4526(a) of the Judicial Code and that provision is suspended as being inconsistent with this rule. See PA. CONST. **[Art.] art. V, § 10[:];** 42 Pa.C.S. § 4526(c). Sections 4526(b) and (d)—(f) of the Judicial Code are not affected by this rule.

**Paragraph (A) was amended in 1998 to require that the counties use the juror qualification forms provided for in Section 4521 of the Judicial Code, 42 Pa.C.S. § 4521. It is intended that the attorneys in a case may request and receive copies of the jury lists and the qualification forms for the prospective jurors summoned for their case. The information on the qualification forms is not to be disclosed except as provided by this rule or by statute. See also Rule 1107, which requires that jurors complete the standard, confidential information questionnaire for use during voir dire.**

#### *Committee Explanatory Reports:*

Report explaining the September 15, 1993 amendments published at 21 Pa.B. 150 (January 12, 1991). **Order suspending, until further Order of the Court, the September 15, 1993 amendments concerning juror information questionnaires published at 24 Pa.B. 333 (January 15, 1994).**

**Final Report explaining the September 18, 1998 amendments concerning juror information questionnaires published with the Court's Order at 28 Pa.B. 4887 (October 3, 1998).**

**Rule 1106. Examination and Challenges of Trial Jurors.**

**(A)** Voir dire of prospective trial jurors and prospective alternate jurors shall be conducted, and the jurors shall

be selected, in the presence of a judge, unless the judge's presence is waived by the attorney for the Commonwealth, the defense attorney, and the defendant, with the judge's consent.

(B) This oath shall be administered individually or collectively to the prospective jurors:

"You do solemnly swear by Almighty God (or do declare and affirm) that you will answer truthfully all questions that may be put to you concerning your qualifications for service as a juror."

(C) Voir dire, including the judge's ruling on all proposed questions, shall be recorded in full unless the recording is waived. The record will be transcribed only upon written request of either party or order of the judge.

**(D) Prior to voir dire, each prospective juror shall complete the standard, confidential juror information questionnaire as provided in Rule 1107.** The judge may require the parties to submit in writing a list of proposed questions to be asked of the jurors regarding their qualifications. The judge may permit the defense and the prosecution to conduct the examination of prospective jurors or the judge may conduct the examination. In the latter event, the judge shall permit the defense and the prosecution to supplement the examination by such further inquiry as the judge deems proper.

(E) In capital cases, the individual voir dire method must be used, unless the defendant waives that alternative. In non-capital cases, the trial judge shall select one of the following alternative methods of voir dire, which shall apply to the selection of both jurors and alternates:

*(1) Individual Voir Dire and Challenge System.*

(a) Voir dire of prospective jurors shall be conducted individually and may be conducted beyond the hearing and presence of other jurors.

(b) Challenges, both peremptory and for cause, shall be exercised alternately, beginning with the attorney for the Commonwealth, until all jurors are chosen. Challenges shall be exercised immediately after the prospective juror is examined. Once accepted by all parties, a prospective juror shall not be removed by peremptory challenge. Without declaring a mistrial, a judge may allow a challenge for cause at any time before the jury begins to deliberate, provided sufficient alternates have been selected, or the defendant consents to be tried by a jury of fewer than 12, pursuant to Rule 1103.

*(2) List System of Challenges.*

(a) A list of prospective jurors shall be prepared. The list shall contain a sufficient number of prospective jurors to total at least 12, plus the number of alternates to be selected, plus the total number of peremptory challenges (including alternates).

(b) Prospective jurors may be examined collectively or individually regarding their qualifications. If the jurors are examined individually, the examination may be conducted beyond the hearing and presence of other jurors.

(c) Challenges for cause shall be exercised orally as soon as the cause is determined.

(d) When a challenge for cause has been sustained, which brings the total number on the list below the number of 12 plus alternates, plus peremptory challenges (including alternates), additional prospective jurors shall be added to the list.

(e) Each prospective juror subsequently added to the list may be examined as set forth in paragraph (E)(2)(b).

(f) When the examination has been completed and all challenges for cause have been exercised, peremptory challenges shall then be exercised by passing the list between prosecution and defense, with the prosecution first striking the name of a prospective juror, followed by the defense, and alternating thereafter until all peremptory challenges have been exhausted. If either party fails to exhaust all peremptory challenges, the jurors last listed shall be stricken. The remaining jurors and alternates shall be seated. No one shall disclose which party peremptorily struck any juror.

**Official Note:** Adopted January 24, 1968, effective August 1, 1968; amended May 1, 1970, effective May 4, 1970; amended June 30, 1975, effective September 28, 1975. The 1975 amendment combined former Rules 1106 and 1107. Comment revised January 28, 1983, effective July 1, 1983; amended September 15, 1993, effective January 1, 1994. The September 15, 1993 amendments suspended December 17, 1993 until further order of the Court; amended February 27, 1995, effective July 1, 1995; **the September 15, 1993 Order amending Rule 1106 is superseded by the September 18, 1998 Order, and Rule 1106 is amended September 18, 1998, effective July 1, 1999.**

**Comment**

This rule applies to all cases, regardless of potential sentence. Formerly there were separate rules for capital and non-capital cases.

If Alternative (E)(1) is used, examination continues until all peremptory challenges are exhausted or until 12 jurors and 2 alternates are accepted. Challenges must be exercised immediately after the prospective juror is questioned. In capital cases, only Alternative (E)(1) may be used unless affirmatively waived by all defendants and the Commonwealth, with the approval of the trial judge.

If Alternative (E)(2) is used, sufficient jurors are assembled to total 12, plus the number of alternates, plus at least the permitted number of peremptory challenges (including alternates). It may be advisable to assemble additional jurors [ , ] to encompass challenges for cause. Prospective jurors may be questioned individually, out of the presence of other prospective jurors, as in Alternative (E)(1); or prospective jurors may be questioned in the presence of each other. Jurors may be challenged only for cause, as the cause arises. If the challenges for cause reduce the number of prospective jurors below 12, plus alternates, plus peremptory challenges (including alternates), new prospective jurors are called and they are similarly examined. When the examination is completed, the list is reduced, leaving only 12 jurors to be selected, plus the number of peremptories to be exercised; and sufficient additional names to total the number of alternates, plus the peremptories to be exercised in selecting alternates. The parties then exercise the peremptory challenges by passing the list back and forth and by striking names from the list alternately, beginning with counsel for the prosecution. Under this system, all peremptory challenges must be utilized. Alternates are selected from the remaining names in the same manner. Jurors are not advised by whom each peremptory challenge was exercised. Also, under Alternative (E)(2), prospective jurors will not know whether they have been chosen until the challenging process is complete and the roll is called.

This rule requires that prospective jurors be sworn before questioning, under either Alternative.

The words in parentheses in the oath shall be inserted when any of the prospective jurors chooses to affirm rather than swear to the oath.

Unless the judge's presence during voir dire and the jury selection process is waived pursuant to paragraph [ (a) ] (A), the judge must be present in the jury selection room during voir dire and the jury selection process.

**Pursuant to paragraph (D), which was amended in 1998, and Rule 1107, prospective jurors are required to complete the standard, confidential juror information questionnaire prior to voir dire. This questionnaire, which facilitates and expedites voir dire, provides the judge and attorneys with basic background information about the jurors, and is intended to be used as an aid in the oral examination of the jurors.**

**The point in time prior to voir dire that the questionnaires are to be completed is left to the discretion of the local officials. Nothing in this rule is intended to require that the information questionnaires be mailed to jurors before they appear in court pursuant to a jury summons.**

See Rule 3 for definitions of "capital case" and "voir dire."

*Committee Explanatory Reports:*

Report explaining the September 15, 1993 amendments published at 21 Pa.B. 150 (January 12, 1991). Order suspending, until further Order of the Court, the September 15, 1993 amendments concerning juror **information** questionnaires published at 24 Pa.B. 333 (January 15, 1994).

Final Report explaining the February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 948 (March 18, 1995).

**Final Report explaining the September 18, 1998 amendments concerning juror information questionnaires published with the Court's Order at 28 Pa.B. 4887 (October 3, 1998).**

**Rule 1107. Juror Information Questionnaire.**

(A) Prior to voir dire:

(1) Each prospective juror shall complete and verify the standard, confidential juror information questionnaire required by paragraph (H) of this rule, and any supplemental questionnaire provided by the court.

(2) The president judge shall designate the method for distributing and maintaining the juror information questionnaires.

(3) The trial judge and the attorneys shall receive copies of the completed questionnaires for use during voir dire, and the attorneys shall be given a reasonable opportunity to examine the questionnaires.

(B) The information provided by the jurors on the questionnaires shall be confidential and limited to use for the purpose of jury selection only. Except for disclosures made during voir dire, or unless the trial judge otherwise orders pursuant to paragraph (F), this information shall only be made available to the trial judge, the defendant(s) and the attorney(s) for the defendant(s), and the attorney for the Commonwealth.

(C) The original and any copies of the juror information questionnaires shall not constitute a public record.

(D) Juror information questionnaires shall be used in conjunction with the examination of the prospective jurors conducted by the judge or counsel pursuant to Rule 1106(D).

(E) If the court adjourns before voir dire is completed, the trial judge may order that the attorneys be permitted to retain their copies of the questionnaires during the adjournment. When copies of the questionnaires are permitted to be taken from the courtroom, the copies:

(1) shall continue to be subject to the confidentiality requirements of this rule, and to the disclosure requirements of paragraph (B), and

(2) shall not be duplicated, distributed, or published.

The trial judge may make such other order to protect the copies as is appropriate.

(F) The original questionnaires of all impaneled jurors shall be retained in a sealed file and shall be destroyed upon completion of the jurors' service, unless otherwise ordered by the trial judge. Upon completion of voir dire, all copies of the questionnaires shall be returned to the trial judge and destroyed, unless otherwise ordered by the trial judge at the request of the defendant(s), the attorney(s) for the defendant(s), or the attorney for the Commonwealth.

(G) The original and any copies of questionnaires of all prospective jurors not impaneled or not selected for any trial shall be destroyed upon completion of the jurors' service.

(H) The form of the juror information questionnaire shall be as follows:



**JUROR INFORMATION QUESTIONNAIRE  
CONFIDENTIAL; NOT PUBLIC RECORD**

NAME: LAST		FIRST		MIDDLE INITIAL	
CITY/TOWNSHIP			COMMUNITIES IN WHICH YOU RESIDED OVER THE PAST 10 YEARS:		
MARITAL STATUS: MARRIED <input type="checkbox"/>	SINGLE <input type="checkbox"/>	SEPARATED <input type="checkbox"/>	DIVORCED <input type="checkbox"/>	WIDOWED <input type="checkbox"/>	
OCCUPATION			OCCUPATION(S) PAST 10 YEARS		
OCCUPATION OF SPOUSE/OTHER			PAST 10 YEARS OCCUPATION OF SPOUSE/OTHER		
NUMBER OF CHILDREN			RACE: <input type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> HISPANIC <input type="checkbox"/> OTHER		
LEVEL OF EDUCATION YOURS		SPOUSE/OTHER		CHILDREN	

**YES NO**

1. Do you have any physical or psychological disability or are you presently taking any medication? ☐ YES ☐ NO
2. Have you ever served as a juror before? ☐ YES ☐ NO  
If so, were you ever on a hung jury? ☐ YES ☐ NO
3. Do you have any religious, moral, or ethical beliefs that would prevent you from sitting in judgment in a criminal case and rendering a fair verdict? ☐ YES ☐ NO
4. Have you or anyone close to you ever been the victim of a crime? ☐ YES ☐ NO
5. Have you or anyone close to you ever been charged with or arrested for a crime, other than a traffic violation? ☐ YES ☐ NO
6. Have you or anyone close to you ever been an eyewitness to a crime, whether or not it ever came to court? ☐ YES ☐ NO
7. Have you or anyone close to you ever worked in law enforcement or the justice system? This includes police, prosecutors, attorneys, detectives, security or prison guards, and court related agencies. ☐ YES ☐ NO
8. Would you be more likely to believe the testimony of a police officer or any other law enforcement officer because of his or her job? ☐ YES ☐ NO
9. Would you be less likely to believe the testimony of a police officer or other law enforcement officer because of his or her job? ☐ YES ☐ NO
10. Would you have any problem following the court's instruction that the defendant in a criminal case is presumed to be innocent unless and until proven guilty beyond a reasonable doubt? ☐ YES ☐ NO
11. Would you have any problem following the court's instruction that the defendant in a criminal case does not have to take the stand or present evidence, and it cannot be held against the defendant if he or she elects to remain silent or present no evidence? ☐ YES ☐ NO
12. Would you have any problem following the court's instruction in a criminal case that just because someone is arrested, it does not mean that the person is guilty of anything? ☐ YES ☐ NO
13. In general, would you have any problem following and applying the judge's instruction on the law? ☐ YES ☐ NO
14. Would you have any problem during jury deliberations in a criminal case discussing the case fully but still making up your own mind? ☐ YES ☐ NO
15. Is there any reason you could not be a fair juror in a criminal case? ☐ YES ☐ NO

**I hereby certify that the answers on this form are true and correct. I understand that false answers provided herein subject me to penalties under 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.**

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**Official Note:** Former Rule 1107 rescinded September 28, 1975. Present Rule 1107 adopted September 15, 1993, effective January 1, 1994; suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order is superseded by the September 18, 1998 Order, and present Rule 1107 adopted September 18, 1998, effective July 1, 1999.

### Comment

This rule requires that, prior to voir dire in any criminal case, the prospective jurors, including prospective alternate jurors, must complete the standard, confidential juror information questionnaire required in paragraph (H), and that the trial judge and attorneys must automatically be given copies of the completed questionnaires in time to examine them before voir dire begins. Compare Rule 1104, which provides that attorneys must request copies of juror qualification forms for the jurors summoned in their case.

Under paragraph (A)(2), it is intended that the president judge of each judicial district may designate procedures for submitting the questionnaire to the jurors and maintaining them upon completion. For example, some districts may choose to mail them along with their jury qualification form, while others may desire to have the questionnaire completed by the panel of prospective jurors when they report for jury service. This rule, however, mandates that the questionnaires be completed by each prospective juror to a criminal case.

Each judicial district must provide the jurors with instructions for completing the form, and inform them of the procedures for maintaining confidentiality of the questionnaires. It is expected that each judicial district will inform the jurors that the questionnaires will only be used for jury selection.

Pursuant to paragraph (C), the juror information questionnaire is not a public record and therefore may not be combined in one form with the qualification questionnaire required by Rule 1104. However, nothing in this rule would prohibit the distribution of both questionnaires in the same mailing.

Under paragraph (B), the information provided by the jurors is confidential and may be used only for the purpose of jury selection. Except for disclosures made during voir dire, the information in the completed questionnaires may not be disclosed to anyone except the trial judge, the attorneys and any persons assisting the attorneys in jury selection, such as a member of the trial team or a consultant hired to assist in jury selection, the defendant, and any court personnel designated by the judge. Even once disclosed to such persons, however, the information in the questionnaires remains confidential.

Although the defendant may participate in voir dire and have access to information from the questionnaire, nothing in this rule is intended to allow a defendant to have a copy of the questionnaire.

Paragraph (D) makes it clear that juror information questionnaires are to be used in conjunction with the oral examination of the prospective jurors, and are not to be used as a substitute for the oral examination. Juror information questionnaires facilitate and expedite the voir dire examination by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions. Although nothing in this rule is intended to preclude oral questioning during voir dire, the scope of

voir dire is within the discretion of the trial judge. See, e.g., *Commonwealth v. McGrew*, 100 A.2d 467 (Pa. 1953) and Rule 1106(D).

Paragraph (E) provides, upon order of the trial judge, that only attorneys in the case, subject to strict limitations imposed by the court, may retain their copies of the juror information questionnaires during adjournment.

Paragraph (F) provides the procedures for the collection and disposition of the original completed questionnaires and copies for impaneled jurors. Once voir dire is concluded, all copies of the completed questionnaires are returned to the official designated by the president judge pursuant to paragraph (A)(2), and destroyed promptly. The original completed questionnaires of the impaneled jury must be retained in a sealed file in the manner prescribed pursuant to paragraph (A)(2), and destroyed upon the conclusion of the juror's service, unless the trial judge orders otherwise. Because the information in the questionnaires is confidential, the trial judge should only order retention of the original questionnaires under unusual circumstances. Such a circumstance would arise, for example, if the questionnaires were placed at issue for post-verdict review. In that event, the judge would order the preservation of the questionnaires in order to make them part of the appellate record.

Under paragraph (G), the original and any copies of the questionnaires of those jurors not impaneled and not selected for any jury must be destroyed without exception upon completion of their service.

There may be situations in which the attorneys and judge would want to prepare an individualized questionnaire for a particular case. In this situation, a supplemental questionnaire would be used together with the standard juror information questionnaire, and the disclosure and retention provisions in paragraphs (B) and (F) would apply. See (A)(1).

*Committee Explanatory Reports:* Report explaining the September 18, 1998 adoption of new Rule 1107 concerning juror information questionnaires published at 28 Pa.B. 4887 (October 3, 1998).

## Final Report

### *Juror Information Questionnaires*

#### *Introduction*

On October 2, 1998, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania adopted new Rule 1107 (Juror Information Questionnaire), and amended Rules 1104 (Juror Qualification Form) and 1106 (Examination and Challenges of Trial Jurors). These changes, which will become effective on July 1, 1999,<sup>1</sup> mandate the use of a standardized juror information questionnaire in all criminal cases. New Rule 1107 is intended to promote uniform statewide practice, reduce otherwise lengthy voir dire practices, and insure that basic information about the jurors is made known to the parties. The standardized form, which is set forth in new Rule 1107(H), is one page with yes/no questions designed to elicit the most routinely requested information from the prospective jurors in criminal cases. In order to facilitate the implementation of the juror information questionnaire, new Rule 1107(A)(2) provides for the President Judge of each judicial district to establish a method for the distribution and maintenance of the juror information questionnaires.

<sup>1</sup> The effective date of July 1, 1999 is intended to provide an extended period to afford all judicial districts adequate time to establish the methods for distributing and maintaining the juror information questionnaires.

This Final Report has two parts. The "Background" section explains how the Committee came to consider the various issues addressed in the proposal, and the manner in which the Committee developed the proposal through research, discussion, and correspondence. The "Explanation of the Rules" section contains an overview of new rule 1107 and the correlative amendments with a rule-by-rule discussion.

### *Background*

The Committee renewed its consideration of the use of juror information questionnaires in criminal trials because of the Court's 1993 directive to reconsider the previous Recommendation for the mandatory use of juror information questionnaires in criminal cases.<sup>2</sup> Initially, the Committee reaffirmed that the use of juror information questionnaires be mandatory. However, in view of the Court's August 14, 1997 adoption of Pa.R.Civ.P. 220.1 (Voir Dire), which provides for the use of juror information questionnaires at the discretion of the trial judge in civil cases,<sup>3</sup> we reexamined and updated our research and findings that triggered our 1993 Recommendation.

In considering the utility of juror information questionnaires in criminal trials, the Committee noted that, despite the mandates in Rule 1106, voir dire practices continue to vary within and among judicial districts. This divergence creates problems for:

- 1) the jurors, who are directly affected by the procedures employed by different judges and judicial districts;
- 2) the attorneys, who practice before more than one judge, and in several judicial districts; and
- 3) the parties, who should be assured of similar results for similar cases across the Commonwealth.

Furthermore, these variations in the voir dire practices statewide impact on the fairness of trials and on the rights of the parties, and are contrary to the Court's recently renewed efforts toward creating a unified judicial system in Pennsylvania.<sup>4</sup> Our review of the statewide voir dire practices also revealed that voir dire continues to be cumbersome and time consuming in some cases, because some trial judges relinquish all control and permit the attorneys to ask unlimited questions.<sup>5</sup> Conversely, the Committee found that other judges have virtually nullified voir dire by severely restricting the procedure, and preventing the attorneys from eliciting any information beyond the limited information provided on the juror qualification forms.

Based on our review,<sup>6</sup> and the additional research, we again concluded that the mandatory use of juror information questionnaires:

- 1) facilitates the process of voir dire by providing the attorneys for the Commonwealth and the attorneys for the defendants with specific information, routinely asked of each juror during the jury selection process, before the commencement of voir dire;

- 2) provides the attorneys with the ability to pinpoint the major areas of concern, if any, that they would like to address, and to identify areas which need further exploration or clarification before the jury selection begins, thereby eliminating time spent in the courtroom determining what aspects of the jurors' responses need to be developed; and

- 3) standardizes practice, ensuring that:

- a) there are similar results across the state;
- b) common practice and procedure does not vary greatly from one geographical location to another; and
- c) the court's time and resources are not wasted unnecessarily, but are used effectively and efficiently.

In addition, after considerable discussion, the Committee agreed that the juror information questionnaire should be a standardized form.

Because of the four year lapse in time from the 1993 suspension of the juror information questionnaire rules, the changes in the proposal, and to afford members of the bench and bar an opportunity to comment on the proposal, the Committee published the proposal for new Rule 1107 and the amendments to Rules 1104 and 1106 at 27 Pa.B. 5744 (November 8, 1997). In addition, the Committee forwarded a copy of the proposal to each president judge, and to the Pennsylvania Association of Court Management.

Fourteen individuals submitted comments to the Committee. Eleven respondents were trial court judges, two were court administrators, and one was an assistant district attorney. Two correspondents indicated their opposition to the proposal in its entirety, seven opposed the mandatory use of the questionnaires in every criminal trial (several of these indicated that providing for the discretionary use of the questionnaire would be acceptable), and five were against the questionnaire in its published form, but not the idea of using a questionnaire.

The Pennsylvania Association of Court Management responded that the organization had sent a survey to its members, and the members' perspectives "generally ran the spectrum from no problem to vehemently opposed." The Association also reported that responding members expressed concern that mandating the questionnaires would be time consuming, both for the jurors who are required to complete the questionnaires, and for the administration responsible for copying them, thereby lengthening the jury selection process. In addition, they were concerned about the costs for copying the five-page questionnaire, and for hiring the personnel to complete the task.

We also received correspondence from a court administrator from a southeastern county reporting on a survey he conducted of the jurors who appeared for jury duty over a four week period in that county. Each juror was given a copy of the juror information questionnaire in its published form, and were requested to indicate whether they approved of its use. There were 696 individuals who responded to the survey. Out of these, 459 jurors approved the use of the questionnaire (50 strongly approved, 350 approved, and 59 approved with reservation).

In view of the limited number of responses to the proposal, most of which raised the same concerns about costs and time,<sup>7</sup> the Committee conducted a survey of all

<sup>2</sup> In 1993, the Court adopted identical changes to both the Criminal and Civil Rules which provided for the mandatory use of juror information questionnaires in all civil and criminal cases. On December 17, 1993, the Court suspended the Order adopting those changes, and instructed both Committees to reexamine the issue of mandatory juror information questionnaires.

<sup>3</sup> The rule became effective on January 1, 1998.

<sup>4</sup> See, e.g., "Interim Report of the Master on the Transition to State Funding of the Unified Judicial System." The Honorable Frank J. Montemuro, Jr., Master.

<sup>5</sup> This creates an ordeal for the jurors, and absorbs an inordinate amount of the court's time and resources.

<sup>6</sup> In addition to considering a discretionary system similar to new Civil Rule 220.1 and a mandatory system similar to the 1993 Recommendation, the Committee also explored other alternatives including: 1) a partially mandatory rule requiring the use of juror information questionnaires for all capital cases or all cases involving felonies, and 2) a rule incorporating a "discretionary-mandatory" local option, which would give the president judge of each judicial district the discretion to mandate the use of juror information questionnaires in all criminal trials in that judicial district.

<sup>7</sup> The same concerns had been raised in 1993 by a comparably limited number of individuals.

of the President Judges to determine if the concerns were as widespread as the correspondents indicated. Two questions were asked:

1. Are juror information questionnaires used in your judicial district?
2. Would you be opposed to the use of juror information questionnaires?

The responses to the survey made it clear that the majority of the publication responses the Committee received were from those who oppose the mandatory use of juror information questionnaires in all criminal cases, and those who oppose the questionnaire as published at 27 Pa.B. 5747-8. Forty out of the fifty-seven President Judges who responded reported that they already use juror information questionnaires, with eight of these indicating that they use a questionnaire only on a limited basis. Forty-one President Judges indicated that they do not oppose the use of juror information questionnaires if it is not mandatory, and four reported that they do not oppose the use of juror information questionnaires, but do oppose the published version of the questionnaire. Geographically, those opposing the use of juror information questionnaires are located throughout the extreme northeast, southwest, and northwest areas of the Commonwealth, as well as a few counties surrounding the capital.

Following our review of the publication responses and survey responses, the Committee reassessed the entire proposal. We weighed the pros and cons of recommending a discretionary scheme versus a mandatory scheme for the use of juror information questionnaires. The Committee agreed that the conclusions raised by the correspondents who opposed the mandatory use of juror information questionnaires were not persuasive. In view of these considerations, the Committee again declined to merely provide for the discretionary use of the juror information questionnaire. We reasoned that 1) a rule providing for the discretionary use of the questionnaires will hamper the goal of the unified statewide judicial system, and 2) discretionary rules encourage trial judges and judicial districts to employ different procedures, enabling them to circumvent the particular requirements of statewide rules. Additionally, the Committee agreed that under a discretionary system, the benefits of the juror information questionnaire would not be realized in all cases, the problems encountered by litigants in a jury trial would not be remedied, and the parties may be adversely affected by a judge who has procedures which are unlike other judges within the county and other judicial districts.

On the other hand, the Committee concluded that requiring juror information questionnaires in all criminal cases actually will reduce the time required for voir dire in the usual case, elicit the information most frequently asked during oral voir dire, and assist in achieving the goal of a uniform statewide practice. This conclusion was supported by information we received from the judicial districts, that have employed juror information questionnaires since 1993—once their procedures were established, the delays, costs, or other burdens feared by the correspondents, both in 1993 and now, were actually minimal. Furthermore, the mandatory use of the questionnaires will aid in reversing what appears to be a trend among some members of the common pleas court judiciary: to rigidly control voir dire to the point of vitiating its purpose, putting time management ahead of the rights and interests of the parties. In view of these considerations, the Committee also rejected the other

alternatives considered, and reaffirmed that a juror information questionnaire should be mandated for use in all criminal trials.

In addition to the foregoing considerations, the Committee considered and was sensitive to the concerns raised by members of the judiciary and district court administrators, both in 1993 and now, that the mandatory information questionnaire will create numerous problems with implementation and administration. In view of this, new Rule 1107 allows individual counties to develop their own administratively feasible method of implementation in order to preserve the flexibility inherent in their different but equally valid administrative approaches for handling voir dire and juror questionnaires. See Rule 1107(A)(2).

Furthermore, the Committee understood and appreciated the correspondents' concerns about the time required to complete the five-page version of the questionnaire and have it reproduced, as well as their objections to the questions which were unnecessary, inappropriate, intrusive, superfluous, and ambiguous. Consequently, the Committee reevaluated the juror information questionnaire, and, agreeing it was too long and unmanageable as published, significantly changed it, paring down the length of the questionnaire by omitting the questions most frequently identified as objectionable by the correspondents, and altering its format. As noted in the Introduction, the questionnaire adopted by the Court and mandated by Rule 1107 is one page in length, and contains questions which, for the most part, can be answered yes or no. See Rule 1107(H). This revised format will be easier for the jurors to understand, and will not take a long time to complete. It will also be administratively easier to reproduce and distribute, and facilitates mailing the questionnaire prior to summoning the jurors.<sup>8</sup> Although the remaining questions on the form are less intrusive, the Committee has maintained the general content of the questions that were on the published version of the questionnaire.

#### *Explanation of Rules*

##### 1. New Rule 1107 (Juror Information Questionnaire)

New Rule 1107 sets forth the procedures governing the distribution of the juror information questionnaires to, and completion of them by, all prospective jurors. The rule also mandates that a standardized form of the juror information questionnaire be used in every criminal trial. Finally, it provides that the maintenance of the questionnaire is to be according to the procedures established by each judicial district.

Paragraph (A) is divided into three subparagraphs setting forth the procedures concerning the juror information questionnaires which must be completed prior to voir dire.

Paragraph (A)(1) requires that the standard juror information questionnaire, which is set forth in paragraph (H), is to be completed by every prospective juror in a criminal trial. Recognizing that some cases may require more information than what is provided by the standard form, paragraph (A)(1) includes a provision for the use of supplementary questionnaires. In addition, a provision in the Comment explains that, if the circumstances of a case require that an additional questionnaire would benefit the voir dire process, then a supplemental questionnaire would be permitted under the rule. The Comment also emphasizes that if an additional questionnaire is to be

<sup>8</sup> The Committee is working with the Supreme Court to offer the questionnaire on the Court's Homepage on the Internet.

used, it is to supplement, not replace, the mandated standardized juror information questionnaire.

Paragraph (A)(2) requires that the president judge of each judicial district designate the procedures for distributing and maintaining the questionnaires, thus leaving the decisions of the time and manner in which the questionnaires are initially distributed to jurors to the individual judicial districts. This provision recognizes that each district may have different needs, and therefore, the new rule is not intended to place an onerous burden on the courts by imposing a single method for the distribution and maintenance of questionnaires on all judicial districts. Rather, the new rule anticipates that the judicial districts will establish distribution and maintenance procedures in the most cost-effective and efficient manner for them. In this same vein, the Comment indicates that the juror information questionnaires may be, but do not have to be, mailed to the prospective jurors before they are required to appear at the courthouse for their service. However, because of the confidentiality requirements of the rule, the Comment cautions that the juror information questionnaire and the Rule 1104 juror qualification form are not to be confused nor combined into one form.

Finally, paragraph (A)(3) provides that the trial judge and the attorneys are to receive copies of the completed forms prior to voir dire, and the attorneys are to be given a reasonable opportunity to examine them.

Paragraphs (B) and (C) address the concerns, voiced by some Committee members and in the publication responses, about maintaining the confidentiality of the information on the questionnaire. The Committee reasoned that, if the rule did not specifically address and mandate confidentiality, then the jurors themselves would not supply information willingly or honestly, thereby thwarting the judicial process, and nullifying the purpose of the rule. Accordingly, paragraphs (B) and (C) emphasize that the questionnaires are confidential, are to be used only for voir dire, and that the completed questionnaires do not constitute a public record for any purpose. In addition, paragraph (B) limits access to the information so that, except for oral disclosures during voir dire, or unless the judge orders that the questionnaires be preserved as provided in paragraph (F), the information provided may only be made available to the trial judge, the defendant(s), and the attorneys in the case. The Comment explains that disclosure of information contained on the questionnaire is appropriate to persons legitimately working with the attorneys during the jury selection process, e.g., the prosecuting police officer, a trial team associate, or a jury expert, and emphasizes that the confidentiality proscriptions of the rule apply to those persons.

Paragraph (D) addresses the concerns expressed by Committee members that the required questionnaire may be used by some judges to limit voir dire to the four corners of the questionnaire, thereby preventing additional oral examination during voir dire. In order to emphasize that the purpose of the questionnaire is to supplement and expedite voir dire, the language "shall be used in conjunction with" was added before "the examination of prospective jurors by the judge or attorneys," along with a cross-reference to Rule 1106(D). The Comment further elaborates on paragraph (D) by emphasizing that, although the scope of voir dire is within the discretion of the trial judge, the use of the juror information questionnaire is not intended to supplant the oral question and answer period provided in Rule 1106, nor is it to be the sole means to obtain information about the jury pool. The

intent of this rule is to aid in the process of voir dire by reducing its length inside the courtroom, and this is accomplished because the trial judge and the attorneys will not have to use courtroom time to ask these basic questions and obtain responses to them. The trial judge and the attorneys, however, should ask follow-up questions to those provided on the questionnaire, as well as additional questions more closely related to their specific case.

Another area of concern expressed by several Committee members was that there would be times when court would adjourn before the completion of voir dire, and the attorneys would want to be able to review the questionnaire during adjournment. Given the confidential nature of the questionnaires, and the provisions for retaining the questionnaires by the court, these members pointed out that the rule could be construed as prohibiting the retention of the questionnaire during the adjournment. On the other hand, without some controls, problems could arise if the attorneys retained the questionnaires. In view of these concerns, the Committee agreed that the rule should permit the attorneys to retain the questionnaires, but only during adjournment. The Committee also agreed that the rule should spell out strict requirements against duplicating, distributing, and publishing the questionnaires. See paragraph (E).

Paragraphs (F) and (G) require that:

(1) if a prospective juror is selected as a panel member or alternate, then the copies of that juror's information questionnaire are to be destroyed upon completion of voir dire for the case to which the juror was selected. The original questionnaire must be retained in a sealed file and destroyed upon completion of the juror's service, unless otherwise directed by the trial judge; and

(2) all originals and copies remaining at the end of the service of all jurors who are not selected nor impaneled for trial are to be destroyed.

These two paragraphs distinguish between those jurors who are impaneled for a trial, and those jurors who have completed the forms, but are not selected or impaneled. It is intended that, at the end of the individual juror's service, no original and no copies of the juror's completed questionnaire will remain. The Committee added these provisions to further address their concerns that if the rule was silent on the issues of confidentiality, destruction of the originals, and copies of the completed questionnaires, then the individuals required to complete the form might be reluctant to provide truthful and honest answers.

The Committee also acknowledged that there might be situations in which the original questionnaires should be retained in a sealed file beyond the completion of the jurors' service, such as when an appeal challenges the jury selection process. Accordingly, paragraph (F) provides that the defendant(s), the attorney(s) for the defendant(s), or the attorney for the Commonwealth may request that the originals not be destroyed, and leaves the decision to retain the questionnaires to the discretion of the trial judge.

## 2. Standardized Juror Questionnaire

As explained earlier, Rule 1107 mandates the form for the juror information questionnaire. Paragraph (H) sets forth the form. This standardization of the form will further promote the uniform statewide practice, and will reduce the time required to complete voir dire by eliminating from oral examination the most routinely asked

questions common to most cases, thereby utilizing less of the court's already limited time to dispose of other matters.

The Committee discussed at length the format and information which would most likely facilitate voir dire. During these discussions, the Committee agreed that the form must not be unwieldy or unduly time consuming, and must promote honesty from those completing the form. To accomplish these goals, the Committee concluded that the published questionnaire should be reduced to a one-page document, and that, although it should incorporate the general content of the published form, the form of the questions should elicit yes/no answers. In developing this one-page form, the Committee considered the publication responses opposing some of the questions and compromised significantly on the number and type of questions, settling on the format in paragraph (H), which would be supplemented during oral questioning. For those questions which could not be modified into a yes/no format, the questionnaire contains a table at the top of the questionnaire with spaces for the answers to be written. At the bottom of the form is the verification which each juror is required to sign. The Comment explains that each judicial district is responsible for providing to the jurors instructions for completing the questionnaire, as well as information concerning the judicial district's procedures for maintaining the confidentiality of the questionnaires completed by the jurors.

### 3. Correlative Changes

#### a. Rule 1104 (Juror Qualification Form, Lists of Trial Jurors, and Challenges to the Array)

The changes to Rule 1104(A) require that the jury service official:

1. devise, distribute, and maintain juror qualification forms;
2. prepare, publish, and post lists of the names of persons to serve as jurors; and
3. upon request of an attorney in a case, furnish a list containing the names of prospective jurors summoned to try the cases, along with copies of the completed juror qualification forms.

These changes accomplish the objectives of 42 Pa.C.S. § 4501, and implement the requirements of 42 Pa.C.S. § 4521(d), by requiring that a juror qualification form, not to be confused with the juror information questionnaire, be completed, and providing that attorneys be given a list of prospective jurors for their case, along with copies of the jurors' qualification forms. The Comment expressly differentiates the juror information questionnaire from the juror qualification form, and provides a cross-reference to Rule 1107.

#### b. Rule 1106 (Examination and Challenges of Trial Jurors)

Rule 1106 is the general voir dire rule. The proposed changes to paragraph (D) and the Comment tie the Rule 1106 procedures with the new juror information questionnaire procedures in Rule 1107 by reiterating that:

- (1) all prospective jurors, prior to voir dire, are required to complete the juror information questionnaire provided to them and the information provided by the jurors is intended to supply the trial judge and attorneys with basic information about the jurors before voir dire begins. The cross-reference to Rule 1107 emphasizes that the questionnaire is intended to be used as an aid in the oral examination of the jurors;

- (2) the use of the questionnaire is to expedite voir dire;
- (3) the questionnaire is to supplement, not replace, oral examination of the jurors; and

- (4) although the questionnaire must be completed prior to the commencement of voir dire, it need not be mailed to the jurors before they appear to begin their service, but may be completed when the jurors appear for service.

[Pa.B. Doc. No. 98-1593. Filed for public inspection October 2, 1998, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### SOMERSET COUNTY

#### Consolidated Rules of Court; No. 77 Miscellaneous 1998

#### Adopting Order

Now, this 17th day of September, 1998, it is hereby Ordered:

1. Somerset Rule of Judicial Administration 1901.3, subparagraph A.1., relating to notice of inactive case disposition, is amended to read as shown in following Som. R.J.A. 1301, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

2. The Somerset County Court Administrator shall:

A. File ten (10) certified copies of this Order and the following Rules with the Administrative Office of Pennsylvania Courts;

B. Distribute two (2) certified copies of this Order and the following Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

C. File one (1) certified copy of this Order and the following Somerset County Rule of Judicial Administration with the Pennsylvania Civil Procedural Rules Committee; and

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

By the Court:

EUGENE E. FIKE, II,  
President Judge

### RULES OF COURT

#### Inactive Cases

#### Som. R.J.A. 1901.3. Inactive Cases. Notice.

A. Upon receipt of the case lists, the Court Administrator shall, with the approval of the President Judge, fix a date or dates and time for hearing and disposition of inactive cases, and shall:

1. Give notice by publication once a week for two (2) successive weeks in the *Somerset Legal Journal* and *Somerset Daily American* that at the date and time specified, all inactive cases in which no final decision or order has been made, and in which no step or proceeding has been docketed for two (2) full years, will be finally dismissed with prejudice, unless the parties appear and show good cause why such dismissal should not be ordered; and

2. In each inactive open case, issue an order stating the hearing date and time as aforesaid when the court may dismiss the case, unless the parties appear and show good cause why such dismissal should not be ordered.

[Pa.B. Doc. No. 98-1594. Filed for public inspection October 2, 1998, 9:00 a.m.]

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## COURT OF JUDICIAL DISCIPLINE

**Court Sessions; Doc. No. 1 JD 94**

*Per Curiam:*

### **Order**

*And Now*, this 15th day of September, 1998, it is hereby *Ordered* that the sessions of the Court of Judicial Disci-

pline shall be held in the year 1999 commencing as follows:

January 19—22

March 16—19

May 18—21

September 21—24

November 16—19

[Pa.B. Doc. No. 98-1595. Filed for public inspection October 2, 1998, 9:00 a.m.]

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# RULES AND REGULATIONS

## Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

### DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 135]

#### Neighborhood Assistance Program

By this order, the Department of Community and Economic Development (Department), under the authority of Article XIX-A of the Neighborhood Assistance Act (72 P. S. §§ 8901-A—8906-A) (act) amends Chapter 135 (relating to Neighborhood Assistance Program). The purpose of the amendments is to establish special program priorities for the Fiscal Year (FY) 1997-98.

#### Introduction

Under the authority of the act, the Department administers the Neighborhood Assistance Tax Credit Program (NATCP) and the Enterprise Zone Tax Credit Program (EZTCP). The goal of NATCP is to encourage business firms to provide, either directly or indirectly through neighborhood organizations, neighborhood assistance and job training, education, crime prevention and community services. To meet this objective, the Department of Revenue grants tax credits, equivalent to 50% of the business firms' contributions, to business firms approved by the Department. The goal of EZTCP is to encourage private companies to invest in the rehabilitation, expansion and improvement of buildings or land which promote community economic development and which occur in portions of impoverished areas which have been designated as enterprise zones. To meet this objective, the Department of Revenue grants tax credits, equivalent to 20% of the private companies' investments, to private companies approved by the Department.

Section 8905-A of the act (72 P. S. § 8905-A) directs the Secretary of the Department to promulgate, during the first month of each fiscal year, regulations establishing special program priorities. Under the special program priorities of § 135.41(b) (relating to special program priorities), contributors may earn an additional 20%, for an overall 70% tax credit. Under the special program priorities of § 135.49(a) (relating to Enterprise Zone Tax Credit Program—special program priorities), contributors may earn a 30% tax credit.

#### Analysis

*Section 135.41(b)—NATCP—special program priorities.* No changes, except for the reference to the current fiscal year, have been made to this section. Special program priorities adopted for FY 1997-98 continue the priorities that were in effect last year.

*Section 135.49(a)—EZTCP—special program priorities.* No changes, except for the reference to the current fiscal year, have been made to this section. Special program priorities adopted for FY 1997-98 continue the priorities that have been in effect for several years.

#### Fiscal Impact

(a) *Commonwealth.* The tax credits extended to corporations and businesses under these regulations represent

a proportionate reduction in Commonwealth Corporate Tax revenues. The costs are substantially justified by the creation and retention of jobs and the amelioration of the factors which tend to cause poverty within this Commonwealth.

(b) *Political subdivisions.* The amendments have no measurable cost-effect upon political subdivisions.

(c) *Public.* The amendments continue the tax credits to eligible business firms and private companies.

#### Paperwork

Organizations interested in participating in the special program priorities for NATCP shall submit an addendum to their original NAP proposal.

Private companies and neighborhood organizations interested in participating in the special program priorities for EZTCP shall submit an addendum to their original EZP project application proposal.

#### Notice

Notice of proposed rulemaking has been omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL), which specifies that a regulation may be adopted without notice of proposed rulemaking if proposed rulemaking procedures are "in the circumstances impracticable, unnecessary, or contrary to the public interest." The proposed rulemaking procedures in this instance are not necessary because the special program priorities for the 1997-98 fiscal year continue the priorities that were in effect last year. The only changes being made to this regulation are to change the reference to the "1996-97" fiscal year to the "1997-98" fiscal year.

#### Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on August 12, 1998, the Department submitted a copy of the final-omitted regulations with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC), the Chairpersons of the House Commerce and Economic Development Committee and the Senate Community and Economic Development Committee. On the same date, the final-omitted regulations were submitted to the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5.1(d) of the Regulatory Review Act, these final-omitted regulations were deemed approved by the House and Senate Committees on September 1, 1998. IRRC met on September 10, 1998, and approved the final-omitted regulations.

#### Effective Date/Sunset Date

(a) These final-omitted regulations will become effective upon final publication in the *Pennsylvania Bulletin*.

(b) The final-omitted regulations, by law, are monitored on an annual basis and updated as needed.

#### Contact Person

For an explanation of these regulations contact Jill B. Busch, Deputy Chief Counsel, Department of Community and Economic Development, 416 Forum Building, Harrisburg, PA 17120, (717) 783-8452.

#### Findings

The Department finds that:



(1) The proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202), are impracticable and unnecessary, because the special program priorities for the 1997-98 fiscal year continue the priorities that were in effect last year. The only changes being made to these final-omitted regulations is to change the reference to the "1996-97" fiscal year to the "1997-98" fiscal year.

(2) Public notice of intention to adopt the final-omitted regulations has been omitted under section 204 of the CDL and the regulation thereunder, 1 Pa. Code § 7.4.

(3) Delay in implementing the final-omitted regulations will have a serious adverse impact on the public interest.  
*Order*

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 12 Pa. Code Chapter 135, are amended by amending §§ 135.41b and 135.49a to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL MCCULLOUGH,  
*Secretary*

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 4845 (September 26, 1998).)

**Fiscal Note:** 4-68. No fiscal impact; (8) recommends adoption.

#### **Annex A**

### **TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT**

#### **PART V. COMMUNITY AFFAIRS AND DEVELOPMENT**

#### **Subpart B. COMMUNITY EMPOWERMENT**

#### **CHAPTER 135. NEIGHBORHOOD ASSISTANCE PROGRAM**

#### **TAX CREDITS**

#### **§ 135.41b. Special program priorities.**

For Fiscal Year 1997-98, the special program priorities will be accepted in four categories: Community Development, Comprehensive Services, Affordable Housing Programs and Enterprise Zone Programs. Projects in each category shall relate to activities which will improve the physical and economic environment of low income neighborhoods or which will contribute to neighborhood stabilization by reversing patterns of deterioration and blight. The projects shall demonstrate the local commitment through partnerships of community based organizations, local government and the private sector. The following paragraphs set forth the requirements for the project to be eligible for tax credit valuation of 70%.

\* \* \* \* \*

(5) *Limitations.* During Fiscal Year 1997-98, the Department will allocate no more than \$1.3 million of the available tax credits for valuation at 70%. No more than \$1 million dollars of the tax credits will be allocated to the combined applicants for Community Development and

Affordable Housing Projects, and no more than \$300,000 will be awarded for Comprehensive Service Programs. Approval of projects under special program priorities will be contingent upon the availability of tax credits.

(6) *Applicability.* The special program priorities in this section are applicable to programs implemented during Fiscal Year 1997-98.

\* \* \* \* \*

#### **§ 135.49a. Enterprise Zone Tax Credit Program— special program priorities.**

(a) *Applicability.* The special program priorities in this section are applicable to projects for the Fiscal Year 1997-98.

(b) *Special program priority status.* For the Fiscal Year 1997-98, special program priority status may be granted for projects that will provide employment opportunities for low-income residents of this Commonwealth, or enhance public facilities. If approved under this section, projects will receive tax credits equal to 30% of eligible project costs, up to the maximum amount approved by the Department. The Commonwealth will consider all 20% tax credit requests prior to consideration of 30% tax credit addendum requests for Fiscal Year 1997-98. To qualify for the 30% tax credit, projects shall submit an addendum that addresses the following requirements:

(1) A demonstration that jobs will be created for low-income individuals as a result of the investment made through the Enterprise Zone Tax Credit Program. Project activities shall:

(i) Create at least one job for low-income individuals for each \$15,000 of private investment.

(ii) Include coordination with a local private industry council, office of employment security or county assistance office to assure assistance in job placement of low-income individuals.

(2) A demonstration that the project will include construction of or substantial repairs to a publicly owned facility, for example, streets, sidewalks or street lights.

[Pa.B. Doc. No. 98-1596. Filed for public inspection October 2, 1998, 9:00 a.m.]

## **Title 25—ENVIRONMENTAL PROTECTION**

### **ENVIRONMENTAL QUALITY BOARD**

**[25 PA. CODE CHS. 216, 218, 221,  
223, 227 AND 228]**

#### **Radiological Health**

The Environmental Quality Board (Board) by this order amends Chapters 216, 218, 221, 223, 227 and 228. The amendments update the standards for the safe use of radiation-producing machines.

This order was adopted by the Board at its meeting of July 21, 1998.

#### **A. Effective Date**

These amendments will be effective immediately upon publication in the *Pennsylvania Bulletin* as final rule-making.

### B. *Contact Persons*

For further information, the contact persons are Stuart R. Levin, Chief, Division of Radiation Control, Bureau of Radiation Protection, 13th Floor, Rachel Carson State Office Building, P. O. Box 8469, Harrisburg, PA 17105-8469, (717) 787-3720; and Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 9th Floor, 400 Market Street, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

### C. *Statutory Authority*

The final rulemaking is being made under the authority of the following statutes:

Sections 301 and 302 of the Radiation Protection Act (act) (35 P. S. §§ 7110.301 and 7110.302), which, respectively, direct the Department to develop and conduct comprehensive programs for the registration, licensing, control, management, regulation and inspection of radiation sources and radiation source users, and delegates to the Board the power to adopt the regulations of the Department to implement the act.

Section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes and directs the Board to adopt regulations necessary for the proper performance of the work of the Department.

### D. *Background and Summary*

In 1987, the Board substantially updated its radiological health regulations to provide for compatibility with other states. These updates were published at 17 Pa.B. 5235 (December 19, 1987). Technological advances in the use of X-ray and accelerator equipment and the need to establish and maintain radiation protection standards at least as stringent as the Federal standards provide the basis for these revisions to the existing radiological health regulations.

The present requirements in these chapters were developed in 1982-1983, prior to the effective date of the existing regulations on December 19, 1987. In the meantime, certain advances have occurred, principally in the medical profession, which the existing regulations do not address. These are new modalities for diagnosis and treatment now which did not exist when the existing requirements were being developed and promulgated. Particle accelerators, particularly for use in medical applications, have undergone changes in design and function which were only beginning to emerge when the existing regulations were formulated.

The final amendments in this package are based on the current Parts B, F, H and I of the 1995 version of the Suggested State Regulations for Control of Radiation (SSR) which was published by the Conference of Radiation Control Program Directors (CRCPD). Federal and State regulations for radiation sources and radiation source users are based on the SSR. Amendments to Food and Drug Administration regulations are included in the SSR.

The purpose of these final amendments is to bring existing regulations up-to-date by offering better protection to the employees and patients (for medical diagnosis and treatment applications) and to address health and safety concerns, including the reduction in unnecessary

radiation exposure to patients and employees/operators. The Department's regional staff have encountered difficulties in adapting existing regulations to new technologies and modalities, especially in the diagnostic and therapeutic application of radiation in medicine, some of which relate to the machines and equipment used in generating ionizing radiation. Some also relate to the safety of the personnel working with this equipment and to the safety of patients undergoing medical diagnosis and treatment. One of the goals of the Department is the reduction toward elimination of unnecessary radiation exposure, and the intent of the revisions in the regulations is to close some regulatory gaps and work toward achieving this goal.

As required by section 301(c)(14) of the act, the Department provided the Radiation Protection Advisory Committee (RPAC) with an opportunity to review the proposed amendments and to advise the Department prior to their submittal to the Board. The proposal was provided to RPAC for review on April 23, 1998. The Committee provided oral and written comments at the meeting.

There was concern that there was no existing guidance on how to apply for and obtain an accelerator license. The Department has indicated that it would issue the guidance October 4, 1999, as stated in § 228.21a(d) (relating to notification and licensure requirements).

There was also some confusion in Chapter 228 (relating to radiation safety requirements for particle accelerators) about the terms "registrant" and "licensee." The proposed rulemaking included new regulations for the licensing of accelerators. Therefore the term "registrant" would not be proper and was deleted from those sections where appropriate. In response to the RPAC members' comments, the Department revised the proposed amendments.

### E. *Summary of Comments and Responses on the Proposed Rulemaking*

The Board published notice of proposed rulemaking at 27 Pa.B. 5703 (November 1, 1997) and solicited public comment. In response to the request for comments, the Board received comments from 21 persons. A summary, of the major comments and revisions follows:

There were some comments regarding the licensing requirements of X-ray technologists.

The requirements for licensing X-ray technologists are set by the Department of State. The Department's proposed regulation § 221.11(b) allows the Department to require registrants to comply with the State Department's licensing requirements.

The Department appreciates the concern expressed by the commentators, but suggested that the commentators express their concerns to the Department of State and the Department of Health. The Department has no legal authority to promulgate regulations for auxiliary X-ray operators which is granted by law to the Departments of State and Health.

The requirement for keeping records for 5 years under §§ 221.204(b)(6), 227.11a(h)(4), 227.12a(f), 228.12, 228.32a(a), 228.35(c), 228.38(b), 228.42, 228.61(a)(2), 228.61(b)(2), 228.75(f) and 228.76(6) was questioned as to how effectively an inspection of these 5 year old records will protect citizens from excessive exposure to radiation. There was also a concern about the cost of keeping these records for 5 years. The commentator suggested the length of time for keeping these records should be reduced to a shorter period such as 2 years.

The recordkeeping requirements in §§ 228.61(a)(2) and (b)(2), 228.75(f) and 228.76(6) were not changed. The Department believes 5 years is a minimum amount of time to keep records relating to human radiation exposure. The RPAC recommended the 5-year retention period be kept if the Department inspects the facility at that time.

Recordkeeping requirements not related to human radiation exposure such as spot surveys in §§ 221.204(b)(6), 227.11a(h)(4), 227.12a(f), 228.12, 228.35(c) and 228.38(b) were changed from 5 years to 4 years. Four years is the intended inspection cycle for most facilities under § 221.12 (relating to inspections).

In §§ 228.32a(a) and 228.42, the recordkeeping requirement was deleted.

References to the registrants were deleted in the following: §§ 228.31a(b), 228.37a, 228.44(a) and (b), 228.61(a)(2) and (b)(2), 228.62(b), 228.76(6), 228.11a, 228.12, 228.21a(a) and 228.32a(a).

Cross references to the other State and Federal regulations were made in the following: §§ 221.61, 228.24a(a), 228.25a and 228.39.

Section 216.2(c) (relating to registration) was changed at the suggestion of a commentator to indicate that the Department will issue the Certificate of Registration. Section 216.2(e) was amended by deleting the reference to "written Department approval." This change clarifies that the registrant is responsible for putting the request in writing. This deletion reduces paper work for the Department. Section 216.4(a) (relating to renewal of certificate of registration) was amended as a result of the § 218.11 (relating to registration, renewal of registration and license) name change.

Section 216.4a(c)(2) (relating to expiration and termination of certificate of registration) was amended at the request of the Office of Attorney General. The amendment to § 216.4a(c)(2) made subsection (c)(3) redundant and was therefore deleted. Section 216.4a(c)(4) and (5) was renumbered because of the deletion of paragraph (3).

Section 218.1 (relating to purpose and scope) was amended to add persons who renew registrations. Section 218.11 was amended by adding the words "renewal of registration" and deleting the word "annual" from the section title for clarity and consistency. Section 218.11(d) was amended for clarity and consistency.

Section 221.2 (relating to definitions) was amended by adding a definition of "research," deleting the definition of "gonads," and making minor corrections to "dental panoramic system," "protective barrier" and "qualified expert."

Sections 221.11(a)(2) and 228.35(g)(5) (relating to registrant responsibilities; and operating procedures) were amended for clarification since Subpart A has many nonradiologic requirements. These sections were also amended to distinguish this requirement from §§ 221.11(a)(3) and 228.35(g)(6).

Section 221.11(c)(6) relating to registrant's responsibilities was added because a commentator requested the addition. Section 221.11(e) was amended at the request of a commentator by including "other persons" to address the concern that persons such as parents may be in the room when necessary. In § 221.11(e)(1), the word "equivalency" was changed to "equivalent." Section 221.11(e)(2) was amended as recommended by the RPAC by adding a "2 meter" distance option as in § 221.11(e)(3). Section 221.11(e)(3) was amended as requested by a commentator

to include an exception for shielding patients. Section 221.11(k) was amended by deleting "intraoral" as requested by a commentator. Also, the phrase, "veterinary radiography" was deleted because Chapter 221 (relating to X-rays in the healing arts) does not apply to veterinary radiography. A new § 221.11(m) was added as recommended by the RPAC which is identical to proposed § 228.11a(d) (relating to licensee responsibilities).

Section 221.13 (relating to information to be submitted by persons proposing to conduct healing arts screening) was amended to clarify that the submission for approval for healing arts screening be in writing.

Section 221.15 (relating to use of X-rays in research on humans) regarding the use of X-rays in research on humans was amended as requested for clarity by the Office of the Attorney General and several commentators.

Section 221.32a(e) and (g) (relating to a beam limitation) was amended for clarification of the applicability of the requirement to dental systems. Section 221.32a(h)(1) was amended by changing "size" to "linear dimensions" for clarity.

Section 221.34a(a) (relating to radiation exposure control) was rewritten for clarification.

Section 221.36a(e) (relating to limitation of useful beam of fluoroscopic equipment) was amended at the suggestion of a commentator to correct the cross reference to the Federal regulation. Section 221.36a(j) was renumbered to 221.36a(i)(5) to clarify that the requirement is for spot-film devices.

Section 221.41a (relating to fluoroscope timer) is the existing § 221.37 and was deleted in the original proposed rulemaking, but was inadvertently included in the *Pennsylvania Bulletin* as § 221.41a. It is being deleted and §§ 221.42a, 221.43a and 221.44a were appropriately renumbered.

The renumbered § 221.42a(b)(2) (relating to control of scattered radiation) was amended by clarifying the term "Bucky-slot cover" as requested by a commentator.

Section 221.202(f) (relating to equipment requirements) was amended by changing the requirement for total filtration from 3.5 mm of aluminum to the HVL of 3.2 mm of aluminum at 120 kVp as recommended by the RPAC. The Federal standard is an HVL of 3.2 mm of aluminum at 120 kVp. Section 221.202(g)(1) was amended by changing the 3 mm error limit to the FDA 5 mm error limit as recommended by the RPAC. Section 221.202(g)(2) was amended to clarify which indicators were being referenced in the second sentence. Section 221.202(g)(4) was amended as a result of a comment about other CT numbers. Section 221.202(h) was added at the recommendation of the RPAC to exempt CT units used solely for therapy simulations from the CT requirements.

Section 221.204(a)(1) (relating to radiation measurements and performance evaluation) was amended to correct a typographical error and to add the last sentence as suggested by a commentator. Section 221.204(a)(3) was amended at the suggestion of two commentators to change "12 months" to annually and to delete "major." Section 221.204(a)(3)(i) was amended to add "or 120 kVp." Section 221.204(b) was changed from 15 days to 48 hours because a commentator thought that 15 days was too long to wait to notify the qualified expert of a problem.

Section 223.2a (relating to definitions) was added to provide definitions for terms in Chapter 223 (relating to veterinary medicine). Section 223.8(c) was amended as recommended by the RPAC, by changing the distance for

protective shielding devices from 5 meters to 2 meters as recommended by the RPAC, and for consistency with the lead equivalent requirement in § 221.11(e)(2). Section 223.8(d) (relating to operating procedures) was amended to change the word "ordered" to "authorized." Section 223.12a(h)(2) (relating to fluoroscopic equipment) was amended to correct an erroneous reference and clarify the term "Bucky-slot cover."

Sections 227.11a(d)(1) and (f)(2), 227.12a(d) and (e) (relating to equipment requirements; and area requirements) were revised and §§ 227.11a(d)(2) and 227.13a(d) were deleted. This chapter does not include devices containing radioactive material.

Section 228.2 (relating to definitions) was amended by adding a definition of "virtual source" at the suggestion of two commentators. Section 228.21a(d) was changed from "90 days" to "1 year" to allow the Department sufficient time to generate a licensing guide. A typographical error was also corrected. Section 228.22a(b)(1) (relating to notification and license requirements) was amended by changing "minimize" to "protect." Section 228.22a(a) was amended to confirm that a license will be issued if the operation of the facility will not be harmful to the public.

Sections 228.31a(b), 228.37a, 228.44(a) and (b), 228.61(a)(2) and (b)(2) and 228.62(b) and 228.76(6) were amended to delete the reference to "registrant."

The § 228.11a (relating to licensee responsibilities) title was amended to delete "registrant" and replace with "licensee."

Section 228.12 (relating to information and maintenance record and associated information) was amended to delete reference to "registrant." Also, the requirement to keep records for 5 years was changed to 4 years at the suggestion of a commentator.

Section 228.21a(a) (relating to notification and license requirements) was changed to be the same § 228.22a(a) for "act and article."

Section 228.23a(a) (relating to expiration and termination of a license) was amended for clarification and to specify a period of effectiveness for the license.

Section 228.32a(a) (relating to shielding and safety design requirements) was amended to delete the reference to "registrant" and to delete the last two sentences of the paragraph because the requirements in these sentences appear in § 228.38 (relating to radiation safety surveys).

Section 228.35(b) (relating to operating procedures) was clarified by adding the phrase "or for testing the interlock." Two words in § 228.35(e) were reversed at the suggestion of a commentator. Section 228.35(g)(5) was modified to clarify to whom the section applied. Section 228.36(a) (relating to radiation monitoring requirements) was deleted because, as noted by a commentator, it is not a necessary requirement.

The title of § 228.38 was amended to read "radiation safety surveys." Sections 228.38 (a) and (b) were changed to indicate the "initial" survey and to maintain that survey for life of facility. The reference to Chapter 221 was deleted. In § 228.38(b) the reference to "registrant" was deleted.

Section 228.38(c)(7) was amended by changing the time period from "1 week" to "1 year" to be consistent with requirements in Chapter 219 (relating to standards for protection against radiation). Section 228.38(d) was deleted because of duplication in another requirement.

Section 228.38(e) was amended to delete "registrant" and renumbered to subsection (d).

Section 228.64 (relating to filters) was amended by deleting the last sentence of subsection (a) requiring the wedge filter information. Section 228.65 (relating to electron beam quality) was renamed from "beam quality" to "electron beam quality." The references to "registrant" in § 228.65 (relating to electron beam quality) were deleted. Section 228.75(e)(8) (relating to calibrations) was amended to state when the requirement applies to each electron beam energy.

#### F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

##### *Benefits*

As set forth in this proposal, users of radiation-producing machines will be required to comply with radiation protection standards that will not only protect operators of the machines but will also protect the general public.

##### *Compliance Costs*

Compliance costs are expected to be minimal. The Department has been implementing many of the proposed requirements by recommendation. No financial assistance is believed to be necessary.

##### *Compliance Assistance Plan*

Compliance assistance is available to existing holders of a registration of radiation-producing machines and equipment. These range from small X-ray facilities such as dentists, podiatrists, veterinarians and the like, to large institutions such as colleges and universities, medical centers and industrial complexes, all of which the Department presently regulates and inspects. The Department will issue technical guidance to registrants as recommended by the RPAC.

##### *Paperwork Requirements*

The final-form regulations will not significantly change paperwork requirements.

#### G. *Sunset Review*

These final-form regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

#### H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 16, 1997, the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments, as well as other documentation.

In preparing these final-form regulations, the Department has considered comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this Preamble. The Committees did not provide comments on the proposed rulemaking.

These final-form regulations were deemed approved by the House and Senate Committees on August 31, 1998.

IRRC met on September 10, 1998, and approved the regulation in accordance with section 5(c) of the Regulatory Review Act.

#### I. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These do not enlarge the purpose of the proposal published at 27 Pa.B. 5703.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

#### K. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 216, 218, 221, 223, 227 and 228, are amended by:

(1) Amending §§ 216.2, 216.4, 218.1, 218.11, 221.2, 221.11—221.13, 221.21, 221.28, 221.61, 223.11, 227.14, 227.33, 228.2 and Appendix A; by

(2) Deleting §§ 221.31—221.49, 221.51—221.55, 221.62, 221.81—221.102, 221.201—221.205, 223.12, 223.13, 227.11—227.13, 227.15, 228.11, 228.21—228.26, 228.31—228.34 and 228.41; and by

(3) Adding §§ 216.4a, 221.15, 221.29, 221.30, 221.31a—221.43a, 223.2a, 223.12a, 223.13a, 227.11a—227.13a, 228.11a, 228.21a—228.26a, 228.31a—228.34a, 228.35—228.39, 228.41a, 228.42—228.45, 228.61—228.76 and Appendix A to read as set forth in Annex A, with ellipses referring to the existing text of the regulations. (*Editor's Note:* The proposal to add § 221.44a included with the proposal at 27 Pa.B. 5703 was withdrawn. The amendment of § 221.61 and the addition of § 223.2a were not included in the proposal at 27 Pa.B. 5703.)

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form, as required by the Regulatory Review Act.

(c) The Chairperson shall submit this order and Annex A to IRRC and Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

JAMES M. SEIF,  
Chairperson

**Fiscal Note:** Fiscal Note 7-329 remains valid for the final adoption of the subject regulations.

#### Annex A

### TITLE 25. ENVIRONMENTAL PROTECTION

#### PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

#### ARTICLE V. RADIOLOGICAL HEALTH

#### CHAPTER 216. REGISTRATION OF RADIATION-PRODUCING MACHINES

##### § 216.2. Registration.

(a) A person possessing a radiation-producing machine shall:

(1) Register with the Department within 30 days after acquisition. Registration shall be completed on forms furnished by the Department and shall contain information required on the form and accompanying instructions.

(2) Designate on the registration form an individual to be responsible for radiation protection.

(3) Notify the Department in writing within 30 days of a change of address, owner or radiation safety officer or number of machines.

(b) The registration becomes valid upon receipt of the properly completed registration form and the fee required under Chapter 218 (relating to fees).

(c) A certificate of registration will be issued by the Department to a person whose registration becomes valid under subsection (b).

(d) A registrant shall have the currently valid certificate of registration available for inspection by the Department.

(e) A certificate of registration issued under this chapter may not be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, to any person without submitting a written request by the registrant to the Department.

##### § 216.4. Renewal of certificate of registration.

(a) The Department will send an application for renewal of the certificate of registration to the registrant at least 2 months prior to the expiration date on the certificate of registration. The application for renewal will include references to the fee due under § 218.11 (relating to registration, renewal of registration and license fees).

(b) An applicant for renewal of a registration shall submit a signed application and the fee required under § 218.11 prior to the expiration date of the certificate of registration.

(c) The renewal becomes valid upon receipt of the properly completed application and the fee required under Chapter 218 (relating to fees).

##### § 216.4a. Expiration and termination of certificates of registration.

(a) A certificate of registration expires on the date specified on the certificate of registration. Expiration of the certificate of registration does not relieve the registrant from the requirements of this article.

(b) When a registrant decides to terminate all activities involving radiation-producing machines under the certificate of registration, the registrant shall notify the Department immediately, in writing, and request termination of the certificate of registration. This notification and re-

quest for termination of the certificate of registration shall be in accordance with subsection (c).

(c) If a registrant does not submit a renewal for a certificate of registration under § 216.4 (relating to renewal of certificate of registration), the registrant shall, on or before the expiration date specified in the certificate of registration, do the following:

- (1) Terminate use of all radiation-producing machines.
- (2) Transfer or dispose of all radiation-producing machines in accordance with § 216.6 (relating to assembly, transfer and disposal obligations).
- (3) Remit any outstanding registration or renewal of registration fees owed to the Department under § 218.11 (relating to registration, renewal of registration and license fees).
- (4) Request termination of the certificate of registration in writing to the Department.

## CHAPTER 218. FEES

### GENERAL

#### § 218.1. Purpose and scope.

(a) This chapter establishes fees for registration and licensing and provides for their payment.

(b) Except as otherwise specifically provided, this chapter applies to a person who:

(1) Is required to register or renew registration for radiation-producing machines under Chapter 216 (relating to registration of radiation-producing machines).

(2) Is an applicant for or holder of a radioactive material license issued under Chapter 217 (relating to licensing of radioactive material).

### PAYMENT OF FEES

#### § 218.11. Registration, renewal of registration and license fees.

(a) Annual registration fees for radiation producing machines are as follows:

(1) For dental, podiatric and veterinary facilities—\$75 for the first X-ray tube, plus \$25 for each additional tube.

(2) For hospital facilities—\$520 for the first X-ray tube, plus \$25 for each additional tube.

(3) For other facilities—\$175 for the first X-ray tube, plus \$25 for each additional tube.

(b) A registrant filing an initial registration under § 216.2 (relating to registration) or an application for renewal of a certificate of registration under § 216.4 (relating to renewal of certificate of registration) shall remit the appropriate fee calculated by using the information on the registration or application form and the fee schedule in subsection (a). Fees for any initial registration under § 216.2 are payable upon the filing of the registration. Fees for the renewal of a certificate of registration are payable upon the submission of an application for a renewal of a certificate of registration. If the number of tubes increases after an initial registration or after an application for renewal has been filed with the Department, no additional fee is required until the time of the next registration. Likewise, if the number of tubes decreases during the year, no refund will be made for that year.

(c) Annual license fees for radioactive material are set forth in this subsection.

- (1) *Fees.*

(i) Licenses for radiography under § 217.65; radiopharmacy under §§ 217.90 and 217.91; manufacturing and distribution under §§ 217.81—217.89, 217.92 and 217.93; and, broad scope under §§ 217.71—217.73 (Category 1)—\$1,530.

(ii) Licenses for source material used as shielding; special nuclear material used in gauges; radioactive material used in static eliminators, smoke detectors, fixed gauges and dew point measurers or used for calibration or civil defense activities and radioactive material maintained in storage (Category 2)—\$125.

(iii) For other licenses not listed under this subsection (Category 3)—\$600.

(2) *Exceptions.* This subsection does not apply to the low-level radioactive waste disposal facility operating license.

(d) An initial application for a license shall be accompanied by a check payable to the Department in accordance with the fee schedule in subsection (c). Thereafter, the Department will issue an annual license fee invoice at least 2 months prior to the last day of the license expiration month based on the fee schedule in subsection (c). Fees are payable by the last day of the license expiration month as shown on the license fee invoice.

(e) The Department will not accept an initial application for a license prior to payment of the fees required by subsection (c).

(f) If the registration involves more than one of the facilities in subsection (a), or if a license involves more than one of the categories in subsection (c), the highest applicable fee applies.

## CHAPTER 221. X-RAYS IN THE HEALING ARTS

### GENERAL

#### § 221.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*AAPM*—American Association of Physicists in Medicine.

*ACR*—American College of Radiology.

*Aluminum equivalent*—The thickness of type 1100 aluminum alloy—the nominal chemical composition of type 1100 aluminum alloy is 99% minimum aluminum, .12% copper—affording the same attenuation, under specified conditions, as the material in question.

*Automatic exposure control*—A device which automatically controls one or more technique factors in order to obtain at preselected locations a desired quantity of radiation.

\* \* \* \* \*

*Beam-limiting device*—A device providing a means to restrict the dimensions of the X-ray field.

*Cephalometric device*—A device intended for the radiographic visualization and measurement of the dimensions of the human head.

\* \* \* \* \*

*Control panel*—The part of the X-ray control upon which are mounted the switches, knobs, pushbuttons and other hardware necessary for manually setting the technique factors.

*Dead-man switch*—A switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

*Dental panoramic system*—A device intended to produce a radiographic image of both dental arches on one film.

\* \* \* \* \*

*Filtration*—Material placed in the useful beam to absorb the less penetrating radiation.

\* \* \* \* \*

*Fluoroscopic system*—See fluoroscopic imaging assembly.

*Focal spot*—The area projected on the anode of the X-ray tube by the electrons accelerated from the cathode and from which the useful beam originates.

*Half-value layer (HVL)*—The thickness of specified material which attenuates the exposure rate by 1/2 when introduced into the path of a given beam of radiation.

\* \* \* \* \*

*Intensifying screen*—A fluorescent screen which transforms incident X-ray photons into a visible image.

*Intraoral dental radiography*—A modality of dental radiography in which the image receptor is placed inside a patient's oral cavity.

*kV*—Kilovolts

*kVp*—Peak tube potential (see kilovolts peak).

*Kilovolts peak (kVp)*—The maximum value of the potential difference across the X-ray tube during an exposure.

*Lead equivalent*—The thickness of lead affording the same attenuation, under specified conditions, as the material in question.

\* \* \* \* \*

*Licensed practitioner of the healing arts*—An individual licensed by the Commonwealth to practice the healing arts, which for the purposes of this article shall be limited to medicine, surgery, dentistry, osteopathy, podiatry and chiropractic.

\* \* \* \* \*

*mA*—Milliamperere.

*mAs*—Milliamperere second.

*mR*—Milliroentgen.

\* \* \* \* \*

*Mobile X-ray system*—see X-ray equipment.

*Patient*—An individual subjected to healing arts examination, diagnosis or treatment.

*Peak tube potential*—The maximum value of the potential difference across the X-ray tube during an exposure.

\* \* \* \* \*

*Portable radiation system*—See X-ray equipment.

\* \* \* \* \*

*Positive beam limitation*—The automatic or semiautomatic adjustment of an X-ray beam to the size of the selected image receptor, whereby an X-ray exposure cannot be made without an adjustment.

\* \* \* \* \*

*Protective barrier*—A barrier of radiation absorbing material used to reduce radiation exposure. The term includes the following types:

(i) *Primary protective barrier*—Material used to reduce radiation exposure from the useful beam.

(ii) *Secondary protective barrier*—Material used to reduce exposure from stray, leakage or scattered radiation.

\* \* \* \* \*

*Qualified expert*—An individual having the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs. For example, individuals certified in the appropriate field by the American Board of Radiology, or the American Board of Health Physics, or the American Board of Medical Physics, or those having equivalent qualifications. With reference to the calibration of radiation therapy equipment, an individual having, in addition to the preceding qualifications, training and experience in the clinical applications of radiation physics to radiation therapy. For example, individuals certified in therapeutic radiological physics or X-ray and radium physics by the American Board of Radiology, or radiation oncology physics by the American Board of Medical Physics; or those having equivalent qualifications.

\* \* \* \* \*

*Registrant*—A person who is legally obligated to register with the Department under this article and the act.

\* \* \* \* \*

*Research*—One of the following:

(i) Theoretical analysis, exploration or experimentation.

(ii) The extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental testing of models, devices, equipment, materials and processes. The term includes the external administration of X-ray radiation to human beings for diagnostic or therapeutic purposes or in an equivalent manner as a diagnostic or therapeutic procedure.

\* \* \* \* \*

*SID—Source-image receptor distance*—The distance from the source to the center of the input surface of the image receptor.

\* \* \* \* \*

*Serial radiography*—Radiographic images produced in regular sequence.

\* \* \* \* \*

*Source*—The focal spot of the X-ray tube.

*Specific prescription*—A written or oral directive authorizing a radiographic or fluoroscopic examination of a specified individual.

\* \* \* \* \*

*Technique factors*—The following conditions of operation:

\* \* \* \* \*

(ii) For field emission equipment rated for pulsed operation, peak tube potential in kV, number of X-ray pulses and either tube current or product of tube current and time.

\* \* \* \* \*

*Therapeutic X-ray system*—A system design for irradiation of a part of the human body for the purpose of treatment or alleviation of symptoms of disease.

*Timer*—An electronic device which is capable of measuring an X-ray exposure.

\* \* \* \* \*

*X-ray equipment*—An X-ray system, subsystem or component thereof. Types of X-ray equipment are as follows:

\* \* \* \* \*

(iii) *Stationary X-ray equipment*—X-ray equipment which is installed in a fixed location or vehicle.

\* \* \* \* \*

## ADMINISTRATIVE CONTROLS

### § 221.11. Registrant responsibilities.

(a) The registrant is responsible for directing the operation of X-ray systems under his administrative control and shall do the following:

(1) Assure that the requirements of this article are met in the operation of the X-ray systems.

(2) Permit only auxiliary personnel who have met the applicable radiologic requirements of 49 Pa. Code, Part I, Subpart A (relating to professional and occupational affairs) to operate X-ray systems for diagnostic or therapeutic purposes when employed by a licensed practitioner of the healing arts at the location at which the licensed practitioner practices.

(3) Permit only auxiliary personnel employed by a health care facility regulated by the Department of Health, the Department of Public Welfare or the Federal government to operate X-ray systems for diagnostic or therapeutic purposes in accordance with written job descriptions and employe qualifications.

(b) An individual who operates an X-ray system shall be instructed adequately in the safe operating procedures and be competent in the safe use of the equipment. The instructions shall include, but not be limited to, items included in Appendix A (relating to determination of competence).

(c) A chart, which specifies the techniques for examinations performed with the system, shall be provided in the vicinity of each diagnostic X-ray system's control panel. This chart shall include information pertinent to the particular examination, such as:

(1) The patient's body part and anatomical size, or body part thickness, or age (for pediatrics), versus technique factors to be utilized.

(2) The type and size of the film or film-screen combination.

(3) The type of grid, if any.

(4) The type and location of placement of patient shielding for example, gonad, and the like.

(5) For mammography, indication of kVp/target/filter combination.

(6) Source to image receptor distance to be used, except for dental intra-oral radiography.

\* \* \* \* \*

(e) Except for patients who cannot be moved out of the room, only the staff and ancillary personnel or other persons required for the medical procedure or training shall be in the room during the radiographic exposure. The following apply for individuals other than the patient being examined:

(1) Individuals shall be positioned so that no part of the body will be struck by the useful beam unless

protected by at least 0.5 millimeter lead equivalent material. The lead equivalent of the material is to be determined at 60 kV.

(2) All persons required for the medical procedure shall be protected from the scatter radiation by protective aprons or whole protective barriers of at least 0.25 millimeter lead equivalent or shall be so positioned that the persons are not in the direct line of the useful beam and the nearest portion of the body is at least 2 meters from both the tube head and the nearest edge of the image receptor.

(3) A patient who cannot be removed from the room shall be protected from the scatter radiation by protective barriers of at least 0.25 millimeter lead equivalent material unless the shield would compromise the health of the individual or shall be so positioned that the patient is not in the direct line of the useful beam and the nearest portion of the body is at least 2 meters from both the tube head and the nearest edge of the image receptor.

(f) During diagnostic procedures in which the gonads are in the useful beam, gonad shielding of at least 0.5 millimeter lead equivalent shall be used for patients except for cases in which this would interfere with the diagnostic procedure.

(g) An individual may not be exposed to the useful beam except for healing arts purposes or under § 221.15 (relating to use of X-rays in research on humans). An exposure shall be authorized by a licensed practitioner of the healing arts. This provision specifically prohibits deliberate exposure for the following purposes:

(1) Exposure of an individual for training, demonstration or other nonhealing arts purposes.

(2) Exposure of an individual for the purpose of healing arts screening except as authorized by the Department. When requesting authorization, the registrant shall submit the information as outlined in § 221.13 (relating to information to be submitted by persons proposing to conduct healing arts screening).

(h) If a patient or film requires auxiliary support during a radiation exposure the following apply:

\* \* \* \* \*

(3) An individual may not be used routinely to hold film or patients.

(4) For intraoral dental radiography, neither the tube housing nor the cone shall be held during an exposure.

\* \* \* \* \*

(k) The screen and film system used shall be spectrally compatible and evaluated with respect to screen condition to assure proper system speed. Film cassettes without intensifying screens may not be used for any routine diagnostic radiological imaging, with the exception of standard dental radiography film packets.

(l) The registrant shall have a quality assurance program. This quality assurance program shall be in accordance with guidelines promulgated by the ACR, the AAPM or another accredited organization.

(m) Exposure of a personnel monitoring device to deceptively indicate a dose delivered to an individual is prohibited.

### § 221.12. Records, maintenance and associated information.

The registrant shall maintain records of surveys, calibrations, maintenance and modifications performed on



the X-ray systems including the names of persons who performed the services. The registrant shall keep these records for inspection by the Department for 5 years.

**§ 221.13. Information to be submitted by persons proposing to conduct healing arts screening.**

A person requesting that the Department approve a healing arts screening program shall submit in writing the following information and evaluation. If information submitted to the Department becomes invalid or outdated, the registrant shall immediately notify the Department.

(1) The name and address of the applicant and, if applicable, the names and addresses of agents within this Commonwealth.

(2) The diseases or conditions for which the X-ray examinations are to be used.

(3) The description in detail of the X-ray examinations proposed in the screening program.

(4) A description of the population to be examined in the screening program—age, sex, physical condition and other appropriate information.

(5) An evaluation of known alternate methods not involving ionizing radiation which could achieve the goals of the screening program and why these methods are not used in preference to the X-ray examinations.

(6) An evaluation by a qualified expert of the X-ray systems to be used in the screening program. The evaluation shall show that the systems satisfy the requirements of this article. The evaluation shall include a measurement of patient exposures from the X-ray examinations to be performed.

(7) A description of the diagnostic film quality control program.

(8) A copy of the technique chart for the X-ray examination procedures to be used.

(9) The qualifications of an individual who will be operating the X-ray systems.

(10) The qualifications of the physician who will be supervising the operators of the X-ray systems. The extent of supervision and the method of work performance evaluation shall be specified.

(11) The name and address of the individual who will interpret the radiographs.

(12) A description of the procedures to be used in advising the individuals screened and their private practitioners of the healing arts of the results of the screening procedure and further medical needs indicated.

(13) A description of the procedures for the retention or disposition of the radiographs and other records pertaining to the X-ray examination.

(14) This section does not apply to operations conducted by registrants under 21 CFR Part 900 (relating to mammography).

**§ 221.15. Use of X-rays in research on humans.**

(a) Registrants conducting research using X-rays involving human subjects are exempted from the requirements of this section if the research is conducted, funded, regulated or supported by a Federal agency which has implemented the Federal policy for the protection of human subjects or if the research is carried out in an institution which conducts other Federally funded or

supported human research and follows all Federal requirements for protocol review and research subject protection.

(b) If not exempted under subsection (a), a person shall submit, in writing, the following information and evaluation to the Department and receive approval by the Department before conducting the research. If the information submitted to the Department becomes invalid or outdated, the person shall immediately, in writing, notify the Department.

(1) The name and address of the applicant and, if applicable, the names and addresses of agents within this Commonwealth.

(2) A description of the population to be examined in the research program, age, sex, physical condition and other appropriate information.

(3) An evaluation of known alternate methods not involving ionizing radiation which could achieve the goals of the research program and why these methods are not used in preference to the X-ray examinations.

(4) An evaluation by a qualified expert of the X-ray system to be used in the research program. This evaluation shall show that the system satisfies the requirements of this article. The evaluation shall include a projected measurement of individual and cumulative patient exposures from the X-ray examinations to be performed.

(5) A description of the diagnostic X-ray quality control program.

(6) A copy of the chart which specifies the information for the X-ray examination procedures to be used.

(7) The qualifications of all individuals who will be operating the X-ray system.

(8) The qualifications of the physician who will be supervising the operators of the X-ray systems. The extent of supervision and the method of work performance evaluation shall be specified.

(9) The name and address of the individual who will interpret the radiographs.

(10) A copy of the research protocol authorized by a committee consisting of at least three persons. One of the committee members shall be knowledgeable in radiation effects on humans.

(c) Proposed subjects or their legal representative shall sign a statement acknowledging that they have been informed of their anticipated radiation exposure and possible consequences arising from this exposure.

**DIAGNOSTIC INSTALLATIONS GENERAL REQUIREMENTS**

**§ 221.21. Diagnostic equipment requirements.**

Diagnostic systems incorporating one or more certified components shall comply with 21 CFR 1020.30—1020.33.

**§ 221.28. Technique indicators.**

(a) The technique factors for radiographic systems shall be indicated before exposure except for units utilizing automatic exposure controls, in which case the maximum mAs shall be indicated.

(b) The requirement of subsection (a) may be met by permanent markings on equipment having fixed technique factors. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by a fluoroscopist.

**§ 221.29. Kilovoltage accuracy.**

Discrepancies of more than 10% between set-indicated and measured kV values shall be investigated by a qualified expert or service engineer and appropriate action taken.

**§ 221.30. Exposure reproducibility.**

The coefficient of variation of exposure reproducibility may not exceed 0.10 when technique factors are held constant. This requirement shall be deemed to have been met when four exposures are made. This requirement applies when either manual techniques or automatic exposure control is used.

**§§ 221.31—221.49. (Reserved).**

**§§ 221.51—221.55. (Reserved).**

**§ 221.62. (Reserved).**

**§§ 221.81—221.102. (Reserved).**

**§ 221.31a. Locks.**

Position locking, holding and centering devices on X-ray systems shall function as intended.

**§ 221.32a. A beam limitation.**

(a) The useful beam shall be limited to the area of clinical interest.

(b) The beam limiting device shall do one of the following:

(1) Indicate numerically the field size in the plane of the image receptor to which it is adjusted to within 2% of the SID.

(2) Provide for visually defining the perimeter of the X-ray field except for systems designed for one image receptor size. The total misalignment of the edges of the visually defined field with the respective edges of the X-ray field may not exceed 2% of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the X-ray beam.

(c) A means shall be provided for stepless (continuous) adjustment of the size of the X-ray field except for systems which use removable fixed operation beam limiting devices.

(d) A means shall be provided to:

(1) Indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor.

(2) Align the center of the X-ray field with respect to the center of the image receptor to within 2% of the SID.

(3) Indicate the SID to within 2%.

(e) Intra-oral dental X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit SSD to not less than either of the following:

(1) Eighteen centimeters if operable above 50 kVp.

(2) Ten centimeters if not operable above 50 kVp.

(f) Indication of field size dimensions and SIDs shall be specified so that aperture adjustments result in X-ray field dimensions in the plane of the image receptor which correspond to those indicated by the beam-limiting device to within 2% of the SID when the beam axis is indicated to be perpendicular to the plane of the image receptor.

(g) Intraoral dental systems designed for use with an intraoral image receptor shall be provided with a means to limit the X-ray beam so that:

(1) Eighteen centimeters or more, the X-ray field at the minimum SSD shall be containable in a circle having a diameter of no more than 7 centimeters.

(2) Less than 18 centimeters, the X-ray field at the minimum SSD shall be containable in a circle having a diameter of no more than 6 centimeters.

(h) When positive beam limitation is used, the following conditions shall be met:

(1) The radiation beam may not be larger than the linear dimensions of the image receptor being used.

(2) The positive beam limitation device shall allow the operator to further reduce the size of the radiation field.

(i) Mobile or portable radiographic systems shall be provided with a means to limit the source-to-skin distance to at least 30 centimeters.

(j) Radiographic equipment designed for one or more image receptor sizes at a fixed SID shall be provided with a means to accomplish one of the following:

(1) Limit the field at the plane of the image receptor to dimensions no greater than those of the image receptor and align the center of the X-ray field with the center of the image receptor to within 2% of the SID.

(2) The X-ray field shall be sized and aligned so that at the plane of the image receptor, it does not extend beyond the edge of the image receptor by more than 2% of the SID.

**§ 221.33a. Radiation from capacitor energy storage equipment in standby status.**

Radiation emitted from an X-ray tube when the exposure switch or timer is not activated may not exceed a rate of 2 milliroentgens (0.516  $\mu\text{mC/kg}$ ) per hour at 5 centimeters from an accessible surface of the diagnostic source assembly, with the beam-limiting device fully open.

**§ 221.34a. Radiation exposure control.**

(a) *Radiation exposure control.* A means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, such as the depression of a switch. Radiation exposure may not be initiated without such an action.

(b) *Visual indication and audible signal.* A means shall be provided for visual indication observable from the operator's protected position whenever X-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(c) *Termination of exposure.* A means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses or a preset radiation exposure to the image receptor. Except for dental panoramic systems, termination of an exposure shall cause automatic resetting of the time to its initial setting or to "zero."

(d) *Manual exposure control.* An X-ray control shall be incorporated into each X-ray system which allows the operator to terminate an exposure at any time except for one or more of the following:

(1) Exposure of 1/2 second or less.

(2) During serial radiography in which case a means shall be provided to permit completion of any single exposure of the series in process.

(e) *Automatic exposure control.*

(1) Indication shall be made on the control panel when this mode of operation is selected.

(i) A means shall be provided to terminate irradiation at an appropriate exposure for the projection if the automatic exposure control fails to terminate irradiation.

(ii) A visible signal shall indicate when an exposure has been terminated at the limits required by subparagraph (i), and manual resetting shall be required before further automatically timed exposures can be made.

(2) For X-ray systems operating in automatic exposure control mode, and which lack engineered safeguards that prevent exposure in the event of either a malfunction or a mispositioned X-ray beam with respect to film cassette sensors, the back-up or default mAs shall be set by the operator to an appropriate maximum value for the projection.

(3) X-ray systems utilizing automatic exposure control, in which the back-up mAs values are preset and cannot be selected by the operator, shall prominently indicate the preset mAs value on the console, along with an appropriate warning notice to the operator.

(f) *Exposure control location.*

(1) Stationary X-ray systems shall have X-ray controls permanently mounted in a protected area and situated so that the operator is required to remain in that protected area during the entire exposure.

(2) For mobile and portable X-ray systems the exposure switch shall be arranged so that the operator can stand at least 2 meters from the patient and from the tube head and away from the direction of the useful X-ray beam.

#### FLUOROSCOPIC X-RAY SYSTEMS

##### § 221.35a. Fluoroscopic X-ray systems.

Fluoroscopic X-ray systems shall use an image intensifier and in addition to the requirements of §§ 221.1—221.34a, shall meet the requirements of §§ 221.36a—221.38a (relating to limitation of useful beam of fluoroscopic equipment; activation of fluoroscopic tube; and entrance exposure rate).

##### § 221.36a. Limitation of useful beam of fluoroscopic equipment.

(a) The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at any source-to-image receptor distance.

(b) The X-ray tube used for fluoroscopy may not produce X-rays unless a barrier is in position to intercept the useful beam and the imaging device is in place and operable.

(c) A means shall be provided for stepless (continuous) adjustment of the field size.

(d) The minimum field size at the greatest source to image receptor distance shall be equal to or less than 25 square centimeters.

(e) Equipment may not be operated at a source to skin distance less than 30 centimeters or as required under 21 CFR 1020.32(g) (relating to source-skin distance fluoroscopic equipment).

(f) The width of the X-ray field in the plane of the image receptor may not exceed that of the visible area of the image receptor by more than 3% of the source to image receptor distance. The sum of the excess length and the excess width may not be greater than 4% of the source to image receptor distance.

(g) For rectangular X-ray fields used with a circular image receptor, the error in alignment shall be deter-

mined along the length and width dimensions of the X-ray field which passes through the center of the visible area of the image receptor.

(h) Compliance with subsections (a)—(g) shall be determined with the beam axis perpendicular to the plane of the image receptor.

(i) Spot-film devices shall meet the following additional requirements:

(1) A means shall be provided between the source and the patient for adjustment of the X-ray field size to the size of the portion of film which has been selected on the spot-film selector.

(2) The adjustments shall be automatically accomplished except when the X-ray field size in the plane of the film is smaller than that of the film.

(3) The total misalignment of the edges of the X-ray field with the respective edges of the selected portion of the image receptor along the length or width dimensions of the X-ray field in the plane of the image receptor may not exceed 3% of the source-to image receptor when adjusted for full coverage of the selected portion of the image receptor.

(4) The sum, without regard to sign, of the misalignment along any two orthogonal dimensions, may not exceed 4% of the source, to image receptor distance.

(5) The center of the X-ray field in the plane of the film shall be aligned with the center of the film within 2% of the source to image receptor distance.

##### § 221.37a. Activation of fluoroscopic tube.

X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the fluoroscopist for the entire time of the exposure (dead-man switch). When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate X-ray exposures at any time, but means may be provided to permit completion of any single exposure of the series in process.

##### § 221.38a. Entrance exposure rate.

(a) *Fluoroscopic systems without high level control.* The exposure rate may not exceed 10 roentgens (2.58 mC/kg) per minute except during recording of fluoroscopic images.

(b) *Fluoroscopic systems with high level control.*

(1) When the high level control is activated, the maximum exposure rate shall be 20 roentgens (5.16 mC/kg) per minute.

(2) When the high level control is not activated, the maximum exposure rate shall be 10 roentgens (2.58 mC/kg) per minute.

(3) Special means of activation of high level controls are required. The high level control shall only be operable when continuous manual activation is provided by the operator.

(4) There shall be an indication to the fluoroscopist that the high level control is being used.

(c) *Frequency of output measurements.* Output measurements required by this section shall be made annually and after maintenance that could affect the output of the machine.

(d) *Compliance requirements.* Compliance with subsections (a)—(c) shall be determined as follows:

(1) If the source is below the table, the exposure rate shall be expressed for the center of the useful beam 1 centimeter above the tabletop or cradle with the image intensifier 30 centimeters above the tabletop or cradle.

(2) If the source is above the table, the exposure rate shall be measured at 30 centimeters above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement.

(3) In a c-arm type of fluoroscope, the exposure rate shall be measured at 30 centimeters from the input surface of the fluoroscopic imaging assembly with the source at its closest possible position of operation.

(4) The tube potential and current shall be set to give the maximum exposure possible from the X-ray system. For systems with automatic exposure control, at least 3 millimeters of lead shall be placed between the measuring device and image receptor.

(5) The measurement shall be made at the center of the useful beam.

**§ 221.39a. Barrier transmitted radiation rate limits.**

The protective barrier may not transmit more than 2 milliroentgens (.516  $\mu\text{mC/kg}$ ) per hour at 10 centimeters from an accessible surface of the fluoroscopic imaging assembly for each roentgen per minute of entrance exposure rate.

**§ 221.40a. Indication of tube voltage and current.**

During fluoroscopy and cinefluorography, the voltage and the current shall be continuously indicated.

**§ 221.41a. Fluoroscopic timer.**

A cumulative timing device activated by the fluoroscope switch shall be provided. It shall indicate the passage of a predetermined period of irradiation either by an audible signal or by temporary or permanent interruption of the irradiation when the increment of exposure time exceeds a predetermined limit not exceeding 5 minutes.

**§ 221.42a. Control of scattered radiation.**

(a) Fluoroscopic table designs when combined with normal operating procedures shall be of a type so no unprotected part of the staff or an ancillary individual's whole body is exposed to unattenuated scattered radiation which originates from under the table. The attenuation required may be not less than .25 millimeter lead equivalent.

(b) Equipment configuration when combined with normal operating procedures shall be of a type so that no portion of the staff or an ancillary individual's whole body, except the extremities, is exposed to the unattenuated scattered radiation emanating from above the tabletop unless one of the following criteria is met:

(1) The individual is at least 120 centimeters from the center of the useful beam.

(2) The radiation has passed through at least .25 millimeter of lead equivalent material—for example, drapes, bucky-slot cover (film-tray cover panel), sliding or folding panel or self supporting curtains—in addition to lead equivalency provided by the protective apron referred to in § 221.11(e) (relating to registrant responsibilities).

**§ 221.43a. Mobile fluoroscopes.**

In addition to the other requirements of §§ 221.35a—221.42a, mobile fluoroscopes shall provide image intensification.

**§ 221.61. Radiation therapy simulation systems.**

Radiation therapy simulation systems shall comply with §§ 221.35a—221.44a. Radiation therapy simulation systems are exempt from §§ 221.36a, 221.38a, 221.39a and 221.42a if the systems that do not meet the requirements in § 221.42a (relating to fluoroscopic timer) are provided with a means of indicating the cumulative time that an individual patient has been exposed to X-rays. In this case, procedures shall require that the timer be reset between examinations.

**COMPUTED TOMOGRAPHY X-RAY SYSTEMS**

**§ 221.201. Definitions.**

In addition to the definitions in §§ 215.2 and 221.2 (relating to definitions), the following words and terms when used in this section and §§ 221.202—221.205, have the following meanings, unless the context clearly indicates otherwise:

*CS—Contrast scale*—The change in the linear attenuation coefficient per CT number relative to water; that is:

$$CS = (U_x - U_w) / ((CT)_x - (CT)_w)$$

Where:

$U_x$  = Linear attenuation coefficient of the material of interest

$U_w$  = Linear attenuation coefficient of water

$(CT)_x$  = CT number of the material of interest

$(CT)_w$  = CT number of water

*CT number*—The number used to represent the X-ray attenuation associated with each elemental area of the CT image.

*CT—Computed tomography*—The production of a tomogram by the acquisition and computer processing of X-ray transmission data.

*CTDI—Computed tomography dose index*—The integral of the dose profile along a line perpendicular to the tomographic plane divided by the product of the nominal tomographic section thickness and the number of tomograms produced in a single scan.

*CT conditions of operation*—The selectable parameters governing the operation of a CT X-ray system including, but not limited to, nominal tomographic section thickness, filtration and the technique factors as defined in this chapter.

*Elemental area*—The smallest area within a tomogram for which the X-ray attenuation properties of a body are depicted.

*Gantry*—The tube housing assemblies, beam-limiting devices, detectors, transformers, if applicable, and the supporting structures and frames which hold these components.

*Lux*—A unit illumination equivalent to 1 lumen per square centimeter or .0929 foot-candles.

*MSAD—Multiple scan average dose*—The calculated average dose to the tissue within each slice in a series utilizing an ion chamber. The MSAD is calculated using the following equation:

$$MSAD = (F \times K \times L \times E) / (T \times N)$$

Where

F = Factor to convert exposure in air to absorbed dose in lucite in RADS/mR

K = Calibration factor to account for the ion chamber's response and volume.

L = Effective length of ion chamber in millimeters (mm)

E = Exposure reading in milliroentgen (mR)

T = Nominal slice thickness in millimeters (mm) and

N = Number of slices per scan

*Multiple tomogram system*—A computed tomography X-ray system which obtains X-ray transmission data simultaneously during a single scan to produce more than one tomogram.

*Noise*—The standard deviation of the fluctuations in the CT number expressed as a percentage of the attenuation coefficient of water. Its estimate ( $S_n$ ) is calculated using the following expression:

$$S_n = 100 \times CS \times S/U_w$$

Where:

CS = Contrast scale

$U_w$  = Linear attenuation coefficient of water.

S = Estimated standard deviation of the CT number of picture elements in a specified area of the CT image.

*Nominal tomographic section thickness*—The full-width at half-maximum of the sensitivity profile taken at the center of the cross-sectional volume over which X-ray transmission data are collected.

*Performance phantom*—A phantom which has a capability of providing an indication of contrast scale, noise, nominal tomographic section thickness, the resolution capability of the CT system for low and high contrast objects, and measuring the mean CT number for water or other reference materials.

*Picture element*—See elemental area.

*Pixel*—See elemental area.

*Reference plane*—A plane which is at a known fixed distance—which could be zero—to the tomographic plane and parallel to it.

*Scan*—The complete process of collecting X-ray transmission data for the production of a tomogram. Data may be collected simultaneously during a single scan for the production of one or more tomograms.

*Scan increment*—The amount of relative displacement of the patient with respect to the CT X-ray system between successive scans measured along the direction of the displacement.

*Scan sequence*—A preselected set of two or more scans performed consecutively under preselected CT conditions of operation.

*Scan time*—The period of time between the beginning and end of X-ray transmission data accumulation for a single scan.

*Sensitivity profile*—The relative response of the CT X-ray system as a function of position along a line perpendicular to the tomographic plane.

*Single tomogram system*—A CT X-ray system which obtains X-ray transmission data during a scan to produce a single tomogram.

*Technique factors*—The conditions of operation, specified as follows:

(i) For CT equipment designed for pulsed operations, peak tube potential, scan time in seconds, X-ray pulse width in seconds and the number of X-ray pulses per second or per mAs.

(ii) For CT equipment not designed for pulsed operation, peak tube potential, and either tube current and scan time in seconds or the product of tube current and exposure time in mAs.

*Tomogram*—The depiction of the X-ray attenuation properties of a section through a body.

*Tomographic plane*—The geometric plane which is identified as corresponding to the output tomogram.

*Tomographic section*—The volume of an object whose X-ray attenuation properties are imaged in a tomogram.

## § 221.202. Equipment requirements.

(a) *Termination of exposure.* The operator shall be able to terminate the X-ray exposure at any time during a scan, or series of scans under X-ray system control, of greater than 0.5 second duration. Termination of the X-ray exposure shall necessitate resetting of the conditions of operation prior to initiation of another scan.

(b) *Tomographic plane indication and alignment.*

(1) For any single tomogram system, a means shall be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane.

(2) For any multiple tomogram system, a means shall be provided to permit visual determination of the location of a reference plane. This reference plane may be offset from the location of the tomographic plane.

(c) *Status indicators and control switches.*

(1) The CT X-ray control and gantry shall provide visual indication whenever X-rays are produced and, if applicable, whether the shutter is open or closed.

(2) A signal, audible to the operator, shall indicate that the exposure has terminated.

(3) The emergency buttons or switches shall be clearly labeled as to their function.

(4) Each individual scan or series of scans shall require initiation by the operator.

(d) *Indication of CT conditions of operation.* The CT X-ray system shall be designed so that the CT conditions of operation to be used during a scan or a scan sequence are indicated prior to the initiation of a scan or a scan sequence. On equipment having all or some of these conditions of operation at fixed values, this requirement may be met by permanent markings. Indication of CT conditions of operation shall be visible from any position from which scan initiation is possible.

(e) *Leakage radiation.* The leakage radiation from the diagnostic source assembly measured at a distance of 1 meter in any direction from the source may not exceed 100 milliroentgens (25.8  $\mu\text{C/kg}$ ) in 1 hour when the X-ray tube is operated at its leakage technique factors. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(f) *Beam quality.* The HVL shall be at least 3.2 millimeters aluminum at 120 kVp.

(g) *Additional requirements applicable to CT X-ray systems containing a gantry manufactured after September 3, 1985.*

(1) The total error in the indicated location of the tomographic plane or reference plane by the light field or laser indicator may not exceed 5 millimeters.

(2) If the X-ray production period is less than 0.5 second, the indication of X-ray production shall be actuated for at least 0.5 second. Beam-on and shutter status indicators at or near the gantry shall be discernible from any point external to the patient opening where insertion of any part of the human body into the primary beam is possible.

(3) The CT X-ray system shall be normalized to water.

(4) The CT number for water for a region of interest, not exceeding 100 square millimeters, shall be  $0 \pm 10.0$  CT number units. The facility's performance phantom shall be utilized, with the technique factors specified by the qualified expert, to confirm compliance. In instances when a CTN of 0 for water is inappropriate, as in 3D treatment planning, the qualified expert may establish and maintain an equivalent value.

(5) With the performance phantom, the mean CT number of water of one group of pixels may not differ from the mean CT number of water of a second group of pixels equal size within the same image by more than the manufacturer's published specifications.

(6) The noise, utilizing the facility's performance phantom, may not exceed the manufacturer's published specifications.

(7) The total error between the indicated and actual slice thickness may not exceed 2.0 millimeters.

(8) A distance of at least 100 millimeters measured in a CT image shall agree with the actual distance to within  $\pm 5\%$ .

(9) Premature termination of the X-ray exposure by the operator shall necessitate resetting the CT conditions of operation prior to the initiation of another scan.

(h) *Exemption of CT units used solely for therapy simulations.* CT units used solely for therapy simulations are exempt from §§ 221.202—221.205.

**§ 221.203. Facility design requirements.**

(a) *Oral communication.* Provision shall be made for oral communication between the patient and the operator at the control panel.

(b) *Viewing systems.*

(1) A means shall be provided to permit continuous observation of the patient during irradiation and shall be located so that the operator can observe the patient from the control panel.

(2) If the primary viewing system is by electronic means, an alternate viewing system, which may be electronic, shall be available for use in the event of failure of the primary viewing system.

**§ 221.204. Radiation measurements and performance evaluations.**

(a) *Radiation measurements.*

(1) The CTDI or MSDAD along the two axes specified in paragraph (2)(ii) shall be measured. The CT dosimetry phantom shall be oriented so that the measurement point 1.0 centimeter from the outer surface and within the phantom is in the same angular position within the gantry at the point of maximum surface exposure identified. The CT conditions of operation shall be reproducible and correspond to typical values used by the registrant. If the point of maximum surface exposure constantly

changes due to system design, then measurements shall be taken at four different locations—top left, top right, bottom left, bottom right—1 centimeter from the outer surface of the phantom.

(2) CT dosimetry phantoms shall be used in determining the radiation output of a CT X-ray system. The phantoms shall meet the definition for a CT dosimetry phantom under 21 CFR 1020.33(b)(6) (relating to computed tomography (CT) equipment).

(i) The phantoms shall be specifically designed for CT dosimetry and deemed appropriate by the facility's qualified expert and the Department.

(ii) CT dosimetry phantoms shall provide a means for the placement of dosimeters along the axis of rotation and along a line parallel to the axis of rotation 1.0 centimeter from the outer surface and within the phantom. The means for the placement of dosimeters or alignment devices at other locations may be provided.

(iii) Any effects on the doses measured due to the removal of phantom material to accommodate dosimeters shall be accounted for through appropriate corrections to the reported data or included in the statement of maximum deviation for the values obtained using the phantom.

(iv) Dose measurements shall be performed with the CT dosimetry phantom placed on the patient couch or support device without additional attenuation materials present.

(3) In addition to the items in subsection (b), the following items shall be evaluated annually or after any component repair or change which in the opinion of the qualified expert may effect the performance of the CT unit:

(i) HVL (half value layer) determination at the most commonly used kVp or 120 kVp.

(ii) CTDI or MSAD as specified in § 221.201 (relating to definitions) for commonly used techniques.

(iii) Tomographic plane indication (light/laser alignment).

(iv) Slice thickness as specified in § 221.202(g)(7) (relating to equipment requirements).

(v) Distance readout calibration.

(4) The measurement of the radiation output of a CT X-ray system shall be performed with a dosimetry system that has calibration traceable to National Institute of Standards and Technology. The calibration of the system shall be in accordance with an established calibration protocol. The calibration protocol published by the AAPM is accepted as an established protocol. Other protocols which are equivalent will be accepted, but the user shall submit that protocol to the Department for concurrence that the protocol is equivalent.

(5) An mR/mAs value shall be determined at least annually for the head and body.

(6) Procedures and results shall be maintained for 5 years and be available for review by the Department.

(b) *Performance evaluations.*

(1) Written performance evaluation procedures shall be developed by a qualified expert. These procedures shall be available for review by the Department.

(2) The performance evaluation procedures shall include at least the following using the facility's performance phantom:

- (i) Noise.
- (ii) Contrast scale.
- (iii) Spatial resolution (low and high contrast).
- (iv) Mean CT number for water.
- (v) Acceptable tolerances.

(3) The performance evaluation shall be performed at intervals not to exceed 3 months by the qualified expert or an individual designated by the qualified expert.

(4) The qualified expert need not be present during the performance evaluation, but shall be informed within 48 hours of any problems or unacceptable deviations.

(5) Performance evaluations shall include acquisition of images obtained with the performance phantom using the same processing mode and CT conditions of operation as are used to perform the measurements required by subsection (a).

(6) Records of the performance evaluations shall be maintained for inspection by the Department for at least 4 years.

#### § 221.205. Operating procedures.

(a) Information shall be available at the control panel regarding the operation and performance evaluations of the system. The information shall include the following:

(1) The dates of the latest radiation measurements and performance evaluation and the location within the facility where the results of those tests may be obtained.

(2) Instructions on the use of the CT phantoms including a schedule of performance evaluations appropriate for the system, allowable variations for the indicated parameters and the results of at least the most recent performance evaluation conducted on the system.

(3) The distance in millimeters between the tomographic plane and the reference plane if the reference plane is utilized.

(4) A current technique chart available at the control panel which specifies for each routine examination the CT conditions of operation and the number of scans per examination.

(b) If the radiation measurements and performance evaluation of the CT X-ray system indicates that a system operating parameter has exceeded a tolerance established by the qualified expert, the use of the CT X-ray system on patients shall be limited to those uses permitted by established written instructions of the qualified expert.

### APPENDIX A

#### DETERMINATION OF COMPETENCE

The following are areas in which an individual shall have expertise for the competent operation of diagnostic X-ray equipment:

- (1) *Familiarization with equipment.*
  - (i) Identification of controls.
  - (ii) Function of each control.
  - (iii) How to use a technique chart.

- (2) *Radiation protection.*

- (i) Collimation.
  - (ii) Filtration.

(iii) Gonad shielding and other patient protection devices if used.

(iv) Restriction of X-ray tube radiation to image receptor.

(v) Personnel protection.

(vi) Grids.

(vii) Proper use of personnel dosimetry, if required.

(viii) Understanding units of radiation.

- (3) *Film processing.*

(i) Film speed as related to patient exposure.

(ii) Film processing parameters.

(iii) Quality assurance program.

(iv) Identification of film artifacts and corrective actions, if necessary.

(v) Identification of adequate film exposure on the resultant radiograph, and corrective actions, if necessary.

- (4) *Procedures.*

(i) Knowledge of anatomy and physiology.

(ii) Knowledge of positioning and radiographic demonstration of the requested anatomy with corrective actions, if necessary.

(5) *Emergency procedures.* Termination of exposure in event of automatic timing device failure.

(6) *Continuing education.* Continuing education annually to include radiation protection.

### CHAPTER 223. VETERINARY MEDICINE

#### GENERAL PROVISIONS

#### § 223.2a Definitions.

As used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

*C—Coefficient of variation*—The ratio of the standard deviation to the mean value of a population of observations.

*Dead-man switch*—A switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

*Fluoroscopic imaging assembly*—A subsystem in which X-ray photons produce a fluoroscopic image. The term includes the image receptors such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

*Image receptor*—A device, such as a fluorescent screen or radiographic film, which transforms incident X-ray photons either into a visible image or into another form which can be made into a visible image by further transformations.

*Leakage radiation*—Radiation emanating from the diagnostic or therapeutic source assembly except for the following:

(i) The useful beam.

(ii) Radiation produced when the exposure switch or timer is not activated.

#### § 223.7. Structural shielding.

Facilities regularly used for diagnostic or therapeutic veterinary X-ray procedures shall have protective barriers sufficient to assure compliance with § 219.51 (relating to radiation dose limits for individual members of the public).

**§ 223.8. Operating procedures.**

(a) Individuals, whose presence is not necessary to conduct the X-ray procedures, shall be located in a shielded area or at least 2 meters from the primary X-ray beam and X-ray tubehead.

(b) Mechanical supporting or restraining devices shall be used during X-ray procedures to hold the animal patient or films in position, when the technique permits.

(c) Individuals whose presence is necessary to conduct X-ray procedures and who are not located behind protective barriers or at least 2 meters from the X-ray tubehead and primary X-ray beam shall be protected with appropriate shielding devices such as lead aprons and gloves, and be positioned so that no part of their body except hands and forearms will be exposed to the primary beam. Appropriate shielding devices shall have a lead equivalent at least 0.25 millimeters of lead.

(d) X-ray exposures shall be authorized by a veterinarian.

**X-RAY EQUIPMENT**

**§ 223.11. Radiographic equipment.**

(a) *Leakage radiation.*

(1) The leakage radiation from the tube housing assembly with a beam-limiting device attached measured at a distance of 1 meter in any direction from the source may not exceed 100 milliroentgens (25.8  $\mu\text{C/kg}$ ) in 1 hour when the X-ray tube is operated at its maximum technique factors. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(2) The radiation emitted by a component other than the tube housing assembly with a beam-limiting device attached may not exceed 2 milliroentgens (0.516  $\mu\text{C/kg}$ ) in 1 hour at 5 centimeters from an accessible surface of the component when it is operated in an assembled X-ray system under conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(b) *X-ray beam restriction.*

(1) The primary X-ray beam shall be restricted to the area of clinical interest and equal to or smaller than the image receptor.

(2) Collimating devices capable of limiting the primary beam to the appropriate image receptor to within 2% of the source to image distance shall be provided and used. They shall provide the same degree of protection as is required in subsection (a)(1) for a diagnostic source assembly.

(3) A means shall be provided to align the center of the X-ray field to the center of the image receptor to within 2% of the source to image distance.

(c) *X-ray beam filtration.* The total filtration permanently in the useful beam may not be less than .5 millimeters aluminum equivalent for machines operating up to 50 kVp, 1.5 millimeters aluminum equivalent for machines operating between 50–70 kVp and 2.5 millimeters aluminum equivalent for machines operating above 70 kVp.

(d) *Exposure control devices.*

(1) An exposure control device shall be provided to terminate the exposure after a preset time interval,

preset product of current and time, a preset number of pulses or a preset radiation exposure to the image receptor. Termination of an exposure shall cause automatic resetting of the timer to its initial setting or to zero. It may not be possible to initiate an exposure with the exposure control device in the zero or off position, if either position is available, unless equipped for current adjustment.

(2) A means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator such as the depression of a switch. The switch shall be of the dead man type.

(e) The coefficient of variation for exposure may not exceed 0.10 when all technique factors are held constant. This requirement shall be deemed to have been met if, when 4 exposures are made at identical technique factors, the value of the average exposure (a) is greater than or equal to 5 times the maximum exposure (e(max)) minus the minimum exposure (e(min)).

(f) Veterinary portable X-ray units shall be supported by a tube stand when the technique permits unless the unit is designed to be hand held during X-ray procedures.

(g) The X-ray control shall provide indication of the production of X-rays that is observable from the operator's position. The technique factors that are set prior to the exposure shall be indicated on the X-ray control and shall be visible to the operator from the operator's position.

**§ 223.12. (Reserved).**

**§ 223.12a. Fluoroscopic equipment.**

(a) The fluoroscopic imaging assembly shall be provided with a primary protective barrier that intercepts the entire cross section of the primary beam at the maximum source to image receptor distance.

(b) The X-ray tube used for fluoroscopy may not produce X-rays unless the primary barrier is in position to intercept the entire primary beam.

(c) X-ray production in the fluoroscopic mode shall be controlled by a dead-man switch for the duration of any exposure. When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the X-ray exposures at any time. A means may be provided to permit completion of a single exposure of the series in process.

(d) The protective barrier may not transmit more than 2 milliroentgens (.516  $\mu\text{C/kg}$ ) per hour at 10 centimeters from an accessible surface of the fluoroscopic imaging assembly for each roentgen per minute of entrance exposure rate.

(e) During fluoroscopy and cinefluorography, the voltage and the current shall be continuously indicated.

(f) A cumulative timing device activated by the fluoroscope switch shall be provided. It shall indicate the passage of a predetermined period of irradiation either by an audible signal or by temporary or permanent interruption of the irradiation when the increment of exposure time exceeds a predetermined limit not exceeding 5 minutes.

(g) Fluoroscopic table designs when combined with normal operating procedures shall be of a type that no unprotected part of the staff or an ancillary individual's whole body is exposed to unattenuated scattered radiation which originates from under the table. The attenuation required may be not less than 0.25 millimeter lead equivalent.



(h) Equipment configuration when combined with normal operating procedures shall be of a type that no portion of the staff or an ancillary individual's whole body, except the extremities, is exposed to the unattenuated scattered radiation emanating from above the tabletop unless one of the following criteria is met:

(1) The individual is at least 120 centimeters from the center of the primary beam.

(2) The radiation has passed through at least 0.25 millimeter of lead equivalent material—for example, drapes, bucky-slot cover (film-tray cover panel), sliding or folding panel or self-supporting curtains—in addition to the lead equivalency provided by the protective apron referred to in § 223.8(c) (relating to operating procedures).

(i) In addition to the other requirements of this section, mobile fluoroscopes shall have image intensification.

### § 223.13. (Reserved).

#### § 223.13a. Therapeutic systems.

(a) When the tube is operated at its maximum technique factors, the leakage radiation may not exceed any of the following:

(1) One hundred milliroentgens (25.8  $\mu\text{C/kg}$ ) per hour at 5 centimeters from the surface of the tube housing assembly for contact therapy systems.

(2) One roentgen (258 mC/kg) per hour at 1 meter from the source for 0-500 kVp systems.

(3) One-tenth percent of the exposure rate of the primary beam at 1 meter from the source for 501-999 kVp systems.

(b) Beam limiting devices used for limiting the primary beam shall provide at least the same protection as required by the tube housing assembly.

(c) Therapeutic X-ray systems shall be secured to prevent unauthorized use whenever the system is unattended.

(d) Interlocks shall be provided so that, when a door of the treatment room is opened, either the machine will shut off automatically or the radiation level within the room will be reduced to an average of not more than 2 milliroentgens (0.516  $\mu\text{C/kg}$ ) per hour and a maximum of 10 milliroentgens (2.58  $\mu\text{C/kg}$ ) per hour at a distance of 1 meter in any direction from the target; or interlocks will energize a conspicuous visible or audible alarm signal so that the individual entering and the operator are made aware of the entry. After a shut-off or reduction in output, it shall be possible to restore the machine to full operation only from the control panel.

(e) Interlocks, on-off beam control mechanisms and safety and warning devices shall be checked and appropriately serviced at least once in a calendar year.

(f) Treatment room entrances shall be provided with warning lights, which will indicate when the primary beam is on, in a readily observable position near the outside of access doors.

(g) Exposure factors shall be displayed on the control panel.

(h) Provision shall be made to permit continuous observation of the animal patient from the control panel during irradiation.

(i) A registrant may not permit an individual to operate a therapeutic X-ray system until the individual has received a copy of, and instruction in, the operating

procedures for the system and has demonstrated understanding of the operating procedures and competence in the use of the system.

## CHAPTER 227. RADIATION SAFETY REQUIREMENTS FOR ANALYTICAL X-RAY EQUIPMENT, X-RAY GAUGING EQUIPMENT AND ELECTRON MICROSCOPES

### ANALYTICAL X-RAY EQUIPMENT

#### § 227.11. (Reserved).

#### § 227.11a Equipment requirements.

(a) Open-beam configurations shall have a device which either prevents the entry of any portion of an individual's body into the primary X-ray beam path, or causes the beam to be terminated or interrupted upon entry into the path. A registrant may apply to the Department for an exemption from the requirement of a safety device. The application for an exemption shall include the following:

(1) A description of the various safety devices that have been evaluated.

(2) The reason each of these devices cannot be used.

(3) A description of the alternative methods that will be employed to minimize the possibility of an accidental exposure, including procedures to assure that operators and others in the area will be informed of the absence of safety devices.

(b) Open-beam configurations shall be provided with a readily discernible indication of one or both of the following:

(1) X-ray tube status (on-off) located near the radiation source housing, if the primary beam is controlled in this manner.

(2) Shutter status (open-closed) located near each port on the radiation source housing, if the primary beam is controlled in this manner.

(c) Warning devices shall be labeled so that their purpose is easily identified. In addition, equipment manufactured after December 17, 1987, shall have fail-safe characteristics.

(d) An easily visible warning light located immediately adjacent to the tube head or port and labeled with the words "X-ray on," or words containing a similar warning, shall be provided and shall be illuminated when the X-ray tube is energized.

(e) Unused ports on radiation source housings shall be secured in the closed position in a manner which will prevent casual opening.

(f) Analytical X-ray equipment shall be labeled with a readily discernible sign bearing the radiation symbol and both of the following:

(1) "CAUTION—HIGH INTENSITY X-RAY BEAM" or words having a similar intent on the X-ray source housing.

(2) "CAUTION RADIATION—THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED," or words having a similar intent, near any switch that energizes an X-ray tube.

(g) On equipment with an open-beam configuration manufactured and installed after December 19, 1987, each port on the radiation source housing shall be equipped with a shutter that cannot be opened unless a collimator or coupling has been connected to the port.

(h) Equipment exclusively designed and exclusively used for vacuum spectroscopy where the tube housing and sample chamber is located behind all external surfaces of the unit shall be exempt from the requirements of this section, §§ 227.12a and 227.13a (relating to area requirements; and operating requirements), but shall meet the requirements of § 227.14 (relating to personnel procedures) and the following:

(1) The unit shall be designed so that when the unit is operating at the maximum kilovoltage and current ratings, the leakage radiation will not be in excess of 0.5 milliroentgens (.129  $\mu\text{C/kg}$ ) per hour at a distance of 4 centimeters from any external surface.

(2) Radiation surveys using appropriate radiation survey equipment shall be performed on the analytical X-ray unit upon installation, after moving the unit to a new location, and after maintenance or repair requiring the disassembly or removal of a local component or radiation shielding.

(3) Safety and warning devices shall be tested for proper operation at least annually. If the test reveals that a safety or warning device is not working properly, the unit may not be operated until the warning device is repaired or replaced.

(4) Records of all tests and surveys sufficient to show compliance with subsection (h) shall be maintained and kept available for inspection by the Department for 4 years.

(5) A sign bearing the radiation symbol and the words "CAUTION RADIATION—THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED," or words of similar intent shall be placed next to any switch or device that activates the X-ray tube.

(6) A sign bearing the radiation symbol and the words "CAUTION—RADIATION," or words of similar intent shall be placed next to the opening of the sample chamber.

**§ 227.12. (Reserved).**

**§ 227.12a. Area requirements.**

(a) The source housing construction shall be of a type that when all the shutters are closed and the source is in any possible operating mode, the leakage radiation will not be in excess of 2.5 milliroentgens (.645  $\mu\text{C/kg}$ ) per hour at a distance of 5 centimeters from the housing surface.

(b) The X-ray generator shall have a protective cabinet constructed so that the leakage radiation will not be in excess of 0.5 milliroentgen (.129  $\mu\text{C/kg}$ ) per hour at a distance of 5 centimeters from the housing surface.

(c) The local components of an analytical X-ray system shall be located and arranged and shall include sufficient shielding or access control so that no radiation levels exist in any area surrounding the local component group which could result in a dose to an individual present therein in excess of the limits given in § 219.51 (relating to dose limits for individual members of the public). For systems utilizing X-ray tubes, these requirements shall be met at any specified tube rating.

(d) To show compliance with subsections (a)–(c), the registrant shall perform radiation surveys:

(1) Upon installation of the equipment and at least every 12 months thereafter.

(2) Following a change in the initial arrangement, number or type of local components in the system.

(3) Following maintenance requiring the disassembly or removal of a local component in the system.

(4) During the performance of maintenance and alignment procedures if the procedures require the presence of a primary X-ray beam when a local component in the system is disassembled or removed.

(5) When a visual inspection of the local components in the system reveals an abnormal condition.

(6) When personnel monitoring devices show a significant increase in radiation exposure over the previous monitoring period or the readings are approaching the radiation dose limits.

(7) When the machine is operated in a manner other than the routine manner specified in § 227.13a (relating to operating requirements).

(e) The registrant shall test and inspect all safety and warning devices at least annually to insure their proper operation. If a safety or warning device is found to be malfunctioning, the machine shall be removed from service until repairs to the malfunctioning device are completed.

(f) Records of surveys and tests sufficient to show compliance with this chapter shall be maintained for 4 years and kept available for inspection by the Department.

(g) The equipment used to conduct the surveys and tests required in this chapter shall be adequate to measure the radiation produced by the radiation source.

**§ 227.13. (Reserved).**

**§ 227.13a. Operating requirements.**

(a) Operating procedures shall be written and available to the analytical X-ray equipment operators. These procedures shall include instructions for sample insertion and manipulation, equipment alignment, routine maintenance and data recording procedures which are related to radiation safety. An individual may not operate analytical X-ray equipment in a manner other than that specified in the operating procedures unless the individual has obtained written approval from the radiation safety officer.

(b) An individual may not bypass or otherwise circumvent a safety device unless the individual has obtained the prior written approval of the radiation safety officer. The radiation safety officer may grant the permission only if the following conditions are met:

(1) The radiation safety officer establishes administrative controls and procedures to assure the radiation safety of individuals working around the system.

(2) The period for the bypass of the safety device is not more than 30 days unless written permission is obtained from the Department for a longer period.

(3) A readily discernible sign bearing the words "SAFETY DEVICE NOT WORKING," or words containing a similar warning, is placed on the radiation source housing.

(c) Except as specified in subsection (b), an operation involving removal of covers, shielding materials or tube housings or modifications to shutters, collimators or beam stops may not be performed without ascertaining that the tube is off and will remain off until safe conditions have been restored. The main switch, rather than interlocks, shall be used for routine shutdown in preparation for repairs.

**§ 227.14. Personnel requirements.**

(a) An individual may not operate or maintain analytical X-ray equipment unless the individual has received instruction in and demonstrated competence as to:

(1) Identification of radiation hazards associated with the use of the equipment.

(2) Significance of the various radiation warning and safety devices incorporated into the equipment, or the reasons they have not been installed on certain pieces of equipment, and the extra precautions necessary if the devices are absent or bypassed.

(3) Written operating procedures for the equipment.

(4) Symptoms of an acute localized radiation exposure.

(5) Procedures for reporting an actual or suspected exposure.

(6) Use of survey and personnel monitoring equipment.

(b) Finger or wrist personnel monitoring devices shall be provided to and shall be used by:

(1) Analytical X-ray equipment workers using systems having an open-beam configuration and not equipped with a safety device as described in § 227.12(c) (relating to safety devices and requirements).

(2) Personnel maintaining analytical X-ray equipment if the maintenance procedures require the presence of a primary X-ray beam when a local component in the analytical X-ray system is disassembled or removed or when safety devices are bypassed.

(c) Reported dose values may not be used for the purpose of determining compliance with § 219.31 (relating to occupational dose limits for adults) unless they are evaluated by a qualified expert.

(d) The registrant or licensee shall notify the Department within 5 days of a suspected radiation overexposure to an individual from analytical X-ray machines. This notification is required even if subsequent investigation reveals no actual over-exposure actually occurred.

**§ 227.15. (Reserved).****ELECTRON MICROSCOPES****§ 227.33. Personnel requirements.**

A registrant may not permit an individual to operate or conduct maintenance upon any electron microscope until the individual has received a copy of, instruction in, and demonstrated an understanding of, the operating procedures necessary to insure radiation safety.

**CHAPTER 228. RADIATION SAFETY REQUIREMENTS FOR PARTICLE ACCELERATORS****GENERAL PROVISIONS****§ 228.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Accelerator*—A radiation-producing machine that imparts kinetic energies of one of the following:

(i) One-tenth of one MeV or greater to electrons if the electron beam is brought out of the evacuated region of the unit.

(ii) One MeV or greater to electrons if the electrons are utilized for X-ray production.

(iii) One-tenth of one MeV or greater to other particles.

*Applicator*—A structure which determines the extent of the treatment field at a given distance from the virtual source.

*Beam-limiting device*—A device providing a means to restrict the dimensions of the X-ray field.

*Beam scattering filter*—A filter used to scatter a beam of electrons.

*Central axis of the beam*—A line passing through the virtual source and the center of the plane figure formed by the edge of the first beam limiting device.

*Dose monitoring system*—A system of devices for the detection, measurement and display of quantities of radiation.

*Dose monitor unit*—A unit response from the dose monitoring system from which the absorbed dose can be calculated.

*Existing equipment*—Systems manufactured on or before October 3, 1998.

*Field flattening filter*—A filter used to provide dose uniformity over the area of a useful beam of X-rays at a specified depth.

*Field size*—The configuration of the radiation field along the major axes of an area in a plane perpendicular to the specified direction of the beam of incident radiation at the normal treatment distance and defined by the intersection of the major axes and the 50% isodose line.

*Filter*—Material placed in the useful beam to absorb the less penetrating radiation.

*Isocenter*—A fixed point in space located at the center of the smallest sphere through which the central axes of the beams pass.

*Leakage radiation*—Radiation emanating from the source assembly except for the following:

(i) The useful beam.

(ii) Radiation produced when the exposure switch or timer is not activated.

*Moving beam therapy*—Radiation therapy with relative displacement of the useful beam and the patient during irradiation.

*New equipment*—Systems manufactured after January 1, 1985.

*Normal treatment distance*—

(i) For isocentric equipment, the isocenter.

(ii) For nonisocentric equipment, the target to patient skin distance along the central axis as specified by the manufacturer.

*Phantom*—A volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

*Primary dose monitoring system*—A system which will monitor the useful beam during irradiation and which will terminate irradiation when a preselected number of dose monitor units have been attained.

*Qualified expert*—An individual having the knowledge and training to measure ionizing radiation, to evaluate safety techniques and to advise regarding radiation protection needs. For example, individuals certified in the appropriate field by the American Board of Radiology, or the American Board of Health Physics or the American Board of Medical Physics or those having equivalent

qualifications. With reference to the calibration of radiation therapy equipment, an individual having, in addition to the preceding qualifications, training and experience in the clinical applications of radiation physics to radiation therapy. For example, individuals certified in therapeutic radiological physics or X-ray and radium physics by the American Board of Radiology, or radiation oncology physics by the American Board of Medical Physics; or those having equivalent qualifications.

*Radiation detector*—A device which provides a signal or other indication suitable for measuring one or more quantities of incident radiation.

*Radiation head*—The structure from which the useful beam emerges.

*Secondary dose monitoring system*—A system which will terminate irradiation in the event of failure of the primary dose monitoring system.

*Shadow tray*—A device attached to the radiation head to support auxiliary beam limiting material.

*Spot check*—A procedure to assure that a previous calibration continues to be valid.

*Stationary beam therapy*—Radiation therapy without relative displacement of the useful beam and the patient during irradiation.

*Subsystem*—A combination of two or more components of an accelerator.

*Target*—The part of a radiation source which intercepts a beam of accelerated particles with subsequent emission of other radiation.

*Tube housing assembly*—The term includes high-voltage or filament transformers, or both, and other appropriate elements when contained within the tube housing.

*Useful beam*—The radiation which passes through the tube housing port and the aperture of the beam-limiting device when the exposure switch or timer is activated.

*Virtual source*—The nominal location of either the first scattering foil (for equipment providing electrons only) or the photon focal spot (for equipment capable of delivering both photons and electrons).

*Wedge filter*—An added filter effecting continuous progressive attenuation on all or part of the useful beam.

### § 228.3. Sale and installation.

A person may not sell or install an accelerator that does not meet the provisions of this article.

## ADMINISTRATIVE CONTROLS

### § 228.11. (Reserved).

#### § 228.11a. Licensee responsibilities.

(a) A person may not operate or permit the operation of an accelerator unless the accelerator and installation meet the applicable requirements of this article.

(b) Written safety procedures and rules shall be available at a facility, including restrictions of the operating technique required for the safe operation of the particular accelerator. The operator shall be able to demonstrate familiarity with the rules.

(c) An individual may not be exposed to the useful beam except for healing arts purposes. An exposure shall be authorized by a licensed practitioner of the healing arts.

(d) Exposure of a personnel monitoring device to deceptively indicate a dose delivered to an individual is prohibited.

### § 228.12. Information and maintenance record and associated information.

The licensee shall maintain records of surveys, calibrations, maintenance, machine malfunctions and modifications performed on the accelerators, including the names of persons who performed the services. The registrant or licensee shall keep these records for inspection by the Department for 4 years.

## NOTIFICATION AND LICENSING PROCEDURES

### § 228.21. (Reserved).

#### § 228.21a. Notification and license requirements.

(a) A person who intends to purchase, construct or acquire an accelerator shall notify the Department of this intent by filing an application for a specific license within 30 days after the initial order is issued to obtain any or all parts of the accelerator.

(1) The application shall be filed in duplicate on a form prescribed by the Department.

(2) The application shall contain pertinent information to permit the Department to evaluate the accelerator facility for compliance with the requirements of the act and this article.

(b) In addition to the notification requirement in subsection (a), a person who intends to install an accelerator shall notify the Department within 30 days after the initial construction or installation begins.

(c) Except as provided in subsection (d), a person may not operate a particle accelerator after October 3, 1998, without having obtained a license from the Department.

(d) A registrant possessing an accelerator before October 3, 1998, may continue to operate the accelerator provided an application for a license is filed in duplicate with the Department by October 4, 1999.

(e) The Department may, after the filing of an original application, and before the expiration of the license, require further information to enable the Department to determine whether the application will be granted or denied or whether a license will be modified or revoked.

(f) The application shall be signed by the applicant or licensee or an individual authorized by the applicant or licensee.

### § 228.22. (Reserved).

#### § 228.22a. Issuance of specific licenses.

(a) Upon determination that an application meets the requirements of the act, this article, and the operation of the facility will not be inimical to the safety of the public, the Department will issue a specific license authorizing the proposed activity and containing conditions and limitations as it deems appropriate or necessary.

(b) After the issuance of the license, the Department may, by appropriate regulations or order, incorporate additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of the accelerator subject to this chapter as it deems appropriate or necessary in order to:

(1) Protect the public health and safety or property.

(2) Prevent loss or theft of material subject to this chapter.

**§ 228.23. (Reserved).****§ 228.23a. Expiration and termination of a license.**

(a) Except as provided in § 228.24a (relating to renewal of licenses), and subject to subsection (d)(5)(ii), a specific license expires on the date specified in the license. A license is effective for 5 years.

(b) A licensee shall notify the Department in writing when the licensee decides to permanently discontinue activities involving the accelerator authorized under the license and request termination of the license. The notification and request for termination shall include the reports and information specified in subsection (d)(3)–(5). The licensee is subject to subsections (d) and (e), as applicable, until termination.

(c) At least 30 days before the expiration date specified in a specific license, the licensee shall do one of the following:

(1) Submit an application for license renewal under § 228.24a.

(2) Notify the Department in writing if the licensee decides not to renew the license.

(d) If the licensee does not submit an application for license renewal under § 228.24a on or before the expiration date specified in the license, the licensee shall:

(1) Terminate the use of the accelerator.

(2) Properly dispose of incidental radioactive material generated by the operation of the accelerator.

(3) Submit a completed Department Form ER-BRP-314, "Certificate of Disposition of Materials," describing the disposition of materials in paragraph (2).

(4) Submit a radiation survey report to confirm the absence of radioactive materials or establish the levels of residual radioactive contamination unless the Department determines a radiation survey report is not necessary. This report shall include:

(i) The levels of beta and gamma radiation (in units of microrems or microsieverts, or in microrads or micrograys per hour) at 1 centimeter and gamma radiation at 1 meter from surfaces, levels of removable and fixed alpha, beta and gamma contamination on surfaces (in becquerels or microcuries per 100 square centimeters), and concentrations of contamination in soils (in units of picocuries or becquerels per gram) or in water (in units of picocuries or becquerels per liter) where soil and water concentrations are reported.

(ii) The survey instrumentation used to perform these surveys.

(5) Proceed with one of the following:

(i) Submit a certification that no detectable radioactive contamination was found if no residual contamination attributable to activities conducted under the license is detected. If the information submitted under this section is adequate, the Department will notify the licensee in writing that the license is terminated.

(ii) Continue the license in effect beyond the expiration date. If necessary, with respect to possession of residual radioactive material present as contamination if detectable levels of residual radioactive contamination attributable to activities conducted under the license are found, until the Department notifies the licensee in writing that the license is terminated. During this time, the licensee shall comply with subsection (e), in addition to the

information submitted under paragraphs (3) and (4) and this paragraph, the licensee shall submit a plan for decontamination, if necessary.

(e) A licensee who possesses residual radioactive material under subsection (d)(5)(ii) following the expiration date specified in the license, shall:

(1) Limit activities involving radioactive materials to those activities which are solely related to decontamination and other activities related to preparation for release for unrestricted use.

(2) Continue to control entry to restricted areas until the restricted areas are suitable for release for unrestricted use and until the Department notifies the licensee in writing that the license is terminated.

**§ 228.24. (Reserved).****§ 228.24a. Renewal of licenses.**

(a) An application for renewal of a specific license shall be filed under § 228.21a (relating to notification and license requirements).

(b) If a renewal application is filed prior to 30 days before the expiration of a license, the existing license does not expire until definitive notice has been given by the Department of its action on the renewal application. This subsection also applies to new license applications incorporating other licenses.

**§ 228.25. (Reserved).****§ 228.25a. Amendment of license at the request of the licensee.**

A licensee filing an application for an amendment shall utilize the procedures in § 228.21a (relating to notification and license requirements). The application shall specify the requested amendment and the reason for the amendment.

**§ 228.26. (Reserved).****§ 228.26a. Department action on applications to renew and amend.**

In considering an application by a licensee to renew or amend a license, the Department will apply criteria in the act and this article.

**GENERAL RADIATION SAFETY REQUIREMENTS****§ 228.31. (Reserved).****§ 228.31a. Limitations.**

(a) The facility shall operate within the terms and conditions of the license issued for the operation of the accelerator.

(b) A licensee may not permit an individual to act as an operator of an accelerator until the individual:

(1) Has been instructed in radiation safety and has demonstrated an understanding thereof.

(2) Has received copies of and instruction in this chapter and Chapters 219 and 220 (relating to standards for protection against radiation; and notices, instructions and reports to workers; inspections), pertinent registration and license conditions and the licensee's operating and emergency procedures and demonstrated understanding thereof.

(3) Has demonstrated competence to use the accelerator, related equipment and survey instruments which will be utilized in that individual's assignment.

(c) The radiation safety officer shall have the authority to restrict or terminate operations at an accelerator facility if the action is necessary to minimize danger to health and safety, property or the environment.

**§ 228.32. (Reserved).**

**§ 228.32a. Shielding and safety design requirements.**

(a) The licensee shall consult a qualified expert for the shielding design of accelerator installation and shall have the expert perform a radiation safety survey prior to the first use of the accelerator and when changes are made in shielding operations, equipment or occupancy of adjacent areas.

(b) An accelerator facility shall have primary and secondary protective barriers that are necessary to assure compliance with § 219.51 (relating to dose limits for individual members of the public).

**§ 228.33. (Reserved).**

**§ 228.33a. Facility and shielding requirements.**

In addition to the requirements in Chapter 219 (relating to standards for protection against radiation), the following are required:

(1) The control panel shall be located outside the treatment or irradiation room.

(2) For accelerators not used in the healing arts, provision shall be made to permit continuous observation of the material being irradiated and any transfer or conveyance of material within the irradiation room.

(3) For accelerators used in the healing arts, provision shall be made to permit continuous observation of and communication with the patient during irradiation.

(4) Windows, mirror systems or closed-circuit television viewing screens used for observing the patient or the material being irradiated shall be located so that the operator can maintain direct surveillance over both the control panel and the patient or the material being irradiated.

(5) If the surveillance conducted under paragraph (4) is provided solely by electronic means, and if a malfunction of this surveillance equipment occurs, irradiation activities shall cease until repair of that surveillance equipment is performed and the equipment is found to be functioning normally.

(6) Irradiation or treatment room entrances shall be provided with warning lights in a readily observable position near the outside of access doors. These will indicate when the useful beam is on.

(7) Interlocks shall be provided so that entrance or access doors are closed before irradiation or treatment can be initiated or continued.

(8) For accelerators used to irradiate materials by means of a transfer or conveyance system, a means shall be provided which either terminates the irradiation or prevents entry if an individual attempts access to the irradiation room.

**§ 228.34. (Reserved).**

**§ 228.34a. Accelerator controls and interlock systems.**

(a) Instrumentation, readouts and controls on the accelerator control console shall be clearly identified and easily discernible.

(b) Entrances into a target room or high radiation areas shall have interlocks that meet the requirements of §§ 219.91 and 219.154 (relating to control of access to high radiation areas; and posting of high radiation areas). If the radiation beam is interrupted by a door opening, it shall be possible to reinitiate the radiation exposure only by closing the door first and then by manual action at the control panel.

(c) When an interlock system has been tripped, it shall only be possible to resume operation of the accelerator by manually resetting controls at the interlock position, and lastly at the main control console.

(d) Safety interlocks shall be fail-safe, that is, designed so that a defect or component failure in the interlock system prevents operation of the accelerator.

(e) A scram button or other emergency power cutoff switch shall be located and easily identifiable in all high radiation areas. The cutoff switch shall include a manual reset so that the accelerator cannot be restarted from the accelerator control console without resetting the cutoff switch.

**§ 228.35. Operating procedures.**

(a) Accelerators, when not in operation, shall be secured to prevent unauthorized use.

(b) An interlock may not be used to turn off the accelerator beam except in an emergency or for testing the interlock.

(c) Each safety and warning device, including interlocks, shall be checked at least every 3 months for proper functioning and shall be repaired as necessary. Results of these checks and records of repairs shall be maintained for 4 years at the accelerator facility for inspection by the Department.

(d) In the event of a malfunction of a safety or warning device, the accelerator may not be operated unless appropriate interim precautions are instituted to provide equivalent protection.

(e) If it is necessary to intentionally bypass a safety interlock system or component thereof, the action shall be the following:

(1) Authorized in writing by the radiation safety officer.

(2) Recorded in a permanent log and a notice posted at the accelerator operator's position.

(3) Terminated as soon as possible.

(f) A copy of the current operating and emergency procedures shall be maintained in the accelerator operator area.

(g) For accelerators used in the healing arts, operating procedures shall meet the following requirements:

(1) No individual other than the patient is in the treatment room during treatment of a patient.

(2) If a patient must be held in position during treatment, mechanical supporting or restraining devices shall be used.

(3) The system may not be used in the administration of radiation therapy unless the requirements of this chapter have been met.

(4) Misadministrations, as defined in § 215.2 (relating to definitions), shall be reported as required under § 219.228 (relating to reports of misadministrations).

(5) Only auxiliary personnel who have met the applicable radiologic requirements of 49 Pa. Code Part I, Subpart A (relating to professional and occupational affairs) when employed by a licensed practitioner of the healing arts at the location at which the licensed practitioner practices shall be permitted to operate accelerators for therapeutic purposes.

(6) Only auxiliary personnel employed by a health care facility regulated by the Department of Health, the Department of Public Welfare or the Federal government shall be permitted to operate accelerator systems for therapeutic purposes in accordance with written job descriptions and employe qualifications.

(7) An individual who operates an accelerator system shall be instructed adequately in the safe operating procedures and be competent in the safe use of the equipment. The instructions shall include, but not be limited to, items included in Appendix A (relating to determination of competence).

#### **§ 228.36. Radiation monitoring requirements.**

(a) In addition to the requirements of §§ 219.91 and 219.154 (relating to control of access to high radiation areas; and posting of high radiation areas), an independent radiation monitoring system shall be provided so that the individuals entering or present become aware of the existence of the hazard. Independent radiation monitors shall be calibrated at least annually and after each servicing or repair.

(b) The calibration of the independent radiation monitoring system described in subsection (b) shall verify the response of the instrument to radiation fields of different intensity, and does not require complete accuracy with respect to radiation energy if the accelerator produces radiations greater than 3.0 MeV.

#### **§ 228.37. Production of radioactive material.**

(a) A licensee who produces radioactive material incidental to the operation of an accelerator shall comply with the general license requirements of § 217.48 (relating to a general license for incidental radioactive material produced by an accelerator).

(b) A licensee possessing radioactive material intentionally produced by bombarding nonradioactive material with the accelerator beam shall comply with the specific license requirements of §§ 217.51—217.57 (relating to specific licenses—general conditions).

#### **§ 228.38. Radiation safety surveys.**

(a) A facility shall have an initial survey made by, or under the direction of, a qualified expert. A survey shall also be done after a change in the facility or equipment, including a relocation of the equipment within the irradiation or treatment room.

(b) The qualified expert shall report the survey results in writing to the individual in charge of the facility and a copy of the initial report shall be maintained by the licensee for inspection by the Department for the life of the facility. Other survey reports shall be maintained for inspection by the Department for 4 years. The facility shall be operated in compliance with limitations indicated by the survey.

(c) The report of the survey results shall include:

(1) The date of the measurements.

(2) The reason the survey is required.

(3) The manufacturer's name, model number and serial number of the therapeutic radiation machine accelerator.

(4) The instrument used to measure radiation levels.

(5) A plan of the areas surrounding the treatment room that were surveyed.

(6) The measured dose rate at several points in each area expressed in microsieverts or millirems per hour.

(7) The calculated maximum level of radiation over a period of 1 year for each restricted and unrestricted area.

(8) The signature of the individual who conducted or is responsible for conducting the survey.

(d) If the survey required by subsection (a) indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by § 219.31 or § 219.51 (relating to occupational dose limits for adults; and dose limits for members of the general public), the licensee shall do the following:

(1) Either equip the unit with beam direction interlocks or add additional radiation shielding to ensure compliance with Chapter 219 (relating to standards for protection against radiation).

(2) Perform the survey required by subsection (a) again.

(3) Prepare and submit the report required by subsection (a). The report shall also include:

(i) The results of the initial survey.

(ii) A description of the modification made to comply with this section.

(iii) The results of the second survey.

#### **§ 228.39. Records.**

In addition to the requirements of §§ 219.201—219.211 (relating to records), the licensee shall maintain:

(1) Records of the tests and safety and warning devices described in § 228.35.

(2) The surveys described in §§ 228.32a and 228.38.

(3) The radiation monitoring equipment calibrations and repairs of that equipment under § 228.36 (relating to radiation monitoring requirements).

### **RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL AND RESEARCH ACCELERATORS**

#### **§ 228.41. (Reserved).**

#### **§ 228.41a. Warning devices.**

(a) A location designated as a high radiation area and an entrance to the location shall be equipped with easily observable warning lights that operate only when radiation is being produced.

(b) A high radiation area shall meet the requirements of § 219.91 (relating to control of access to high radiation areas).

#### **§ 228.42. Circuit diagrams.**

Electrical circuit diagrams of the accelerator and the associated safety, warning and interlock systems shall be kept current and maintained for inspection by the Department and shall be available to the operator at an accelerator facility.

#### **§ 228.43. Radiation surveys.**

(a) Periodic surveys shall be made to determine the amount of airborne radioactivity present in areas of airborne hazards.

(b) Periodic smear surveys shall be made to determine the amount of contamination in target and other pertinent areas.

(c) Area surveys shall be made in accordance with the written procedures established by a qualified expert or the radiation safety officer of the accelerator facility.

(d) Records of surveys shall be kept current and on file at an accelerator facility. Records of surveys shall be maintained as described in Chapter 219, Subchapter L (relating to records).

**§ 228.44. Ventilation systems.**

(a) A licensee shall control the concentration of radioactive material in air to meet the requirements of § 219.34 (relating to determination of internal exposure).

(b) A licensee may not vent, release or otherwise discharge airborne radioactive material to an unrestricted area which does not meet the requirements of § 219.51 (relating to dose limits for individual members of the public). Every reasonable effort shall be made to maintain releases of radioactive material to uncontrolled areas as far below these limits as practicable. Compliance with this section shall be demonstrated as described in § 219.52 (relating to compliance with dose limits for individual members of the public).

**§ 228.45. Portable or mobile accelerators.**

Portable or mobile accelerators used for industrial radiography or research shall comply with Chapter 225 (relating to radiation safety requirements for industrial radiographic operations).

**RADIATION SAFETY REQUIREMENTS FOR ACCELERATORS USED IN THE HEALING ARTS**

**§ 228.61. Leakage radiation to the patient area.**

(a) New equipment shall meet the following requirements:

(1) For operating conditions producing maximum leakage radiation, the dose due to leakage radiation, including X-rays, electrons and neutrons, at any point on a circle of 2 meters radius centered on and perpendicular to the central axis of the beam at the isocenter or normal treatment distance and outside the maximum useful beam size, may not exceed 0.1% of the maximum dose of the unattenuated useful beam measured at the point of intersection of the central axis of the beam and the plane surface. Measurements, excluding those for neutrons, shall be averaged over an area up to, but not exceeding, 100 square centimeters at the position specified. Measurements of the portion of the leakage radiation dose contributed by neutrons shall be averaged over an area up to, but not exceeding, 200 square centimeters.

(2) For each system, the licensee shall determine or obtain from the manufacturer the leakage radiation existing at the positions specified in paragraph (1) for the specified operating conditions. The registrant or licensee shall maintain records for 5 years on leakage radiation measurements for inspection by the Department.

(b) Existing equipment shall meet the following requirements:

(1) For operating conditions producing maximum leakage radiation, the absorbed dose due to leakage radiation, including neutrons, at any point on a circle of 2 meters radius centered on and perpendicular to the central axis of the beam 1 meter from the virtual source, may not exceed 0.1% of the maximum absorbed dose of the unattenuated useful beam measured at the point of

intersection of the central axis of the beam and the surface of the circular plane. Measurements shall be averaged over an area up to but not exceeding 100 square centimeters at the positions specified.

(2) For each system, the licensee shall have available the leakage radiation data existing at the positions specified in paragraph (1) for the specified operating conditions. The licensee shall maintain records on radiation leakage for 5 years for inspection by the Department.

**§ 228.62. Leakage radiation outside the patient area for new equipment.**

(a) The absorbed dose due to leakage radiation except in the area specified in § 228.61(a)(1) (relating to leakage radiation to the patient area) when measured at any point 1 meter from the path of the charged particles, before the charged particles strike the target or window, may not exceed 0.1% for X-ray leakage nor 0.5% for neutron leakage of the maximum absorbed dose of the unattenuated useful beam measured at the point of intersection of the central axis of the beam and the circular plane specified in § 228.61(a)(1).

(b) The licensee shall determine or obtain from the manufacturer, the actual leakage radiation existing at the positions specified in subsection (a) for specified operating conditions. Radiation measurements, including neutrons, shall be averaged over an area up to but not exceeding 200 square centimeters.

**§ 228.63. Beam limiting devices.**

Adjustable or interchangeable beam limiting devices shall be provided and the devices may transmit no more than 5% of the useful beam at the normal treatment distance. The neutron component of the useful beam may not be included to comply with this requirement.

**§ 228.64. Filters.**

(a) A filter which is removable from the system shall be clearly identified. Documentation shall contain a description of the filter which includes a drawing showing dimensions and noting materials of construction.

(b) For new equipment which utilizes a system of wedge filters, interchangeable field flattening filters or interchangeable beam scattering filters the following apply:

(1) Irradiation may not be possible until a selection of a filter has been made at the control panel.

(2) An interlock system shall be provided to prevent irradiation if the filter selected is not in the correct position.

(3) An interlock shall be provided to prevent irradiation if a filter selection operation carried out in the treatment room does not agree with the filter selection operation carried out at the control panel.

**§ 228.65. Electron beam quality.**

The licensee shall determine that the following beam quality requirements are met:

(1) The absorbed dose resulting from X-rays in a useful electron beam at a point on the central axis of the beam 10 centimeters greater than the practical range of the electrons may not exceed the values in Table I. Linear interpolation shall be used for values not stated.



Table I

<i>Maximum Energy of Electron Beam in MeV</i>	<i>X-Ray Absorbed Dose as a Fraction of Maximum Absorbed Dose</i>
1	0.03
15	0.05
35	0.10
50	0.20

(2) Compliance with paragraph (1) shall be determined using:

(i) A measurement within a phantom with the incident surface of the phantom at the normal treatment distance and normal to the central axis of the beam.

(ii) The largest field size available which does not exceed 15 centimeters by 15 centimeters.

(iii) A phantom whose cross-sectional dimensions exceed the measurement radiation field by at least 5 centimeters and whose depth is sufficient to perform the required measurement.

(3) The licensee shall determine, or obtain from the manufacturer, the maximum percentage absorbed dose due to stray neutrons in the useful beam for specified operating conditions.

#### **§ 228.66. Beam monitors.**

(a) Therapy systems shall be provided with radiation detectors in the radiation head.

(b) New equipment shall be provided with at least two radiation detectors incorporated into two separate dose monitoring systems.

(c) Existing equipment shall be provided with at least one radiation detector incorporated into a primary dose monitoring system.

(d) The detector in a dose monitoring system shall be:

(1) Permanently installed and interlocked to prevent incorrect positioning.

(2) Part of a dose monitoring system that provides readings in dose monitor units which can be used to calculate the absorbed dose at a reference point in the treatment volume.

(3) Capable of independently monitoring and controlling the useful beam.

(e) For new equipment, the design of dose monitoring systems shall assure that:

(1) The malfunctioning of one system does not affect the correct functioning of the second system.

(2) The failure of an element common to both systems which could affect the correct function of both systems terminates irradiation.

(f) A dose monitoring system shall have a legible display at the control panel. For new equipment, a display shall:

(1) Maintain a reading until intentionally reset to zero.

(2) Have only one scale and no scale multiplying factors.

(3) Utilize a design so that increasing dose is displayed by increasing numbers and that the absorbed dose may be accurately determined under all conditions of use.

(4) Provide that, in the event of a power failure, the dose monitoring information required in this subsection displayed at the control panel at the time of failure shall be retrievable.

#### **§ 228.67. Beam symmetry.**

(a) In new equipment inherently capable of producing useful beams with asymmetry exceeding 5%, at least four different parts of the radiation beam shall be monitored before the beam passes through the beam limiting device.

(b) If the difference in dose rates between two of the different parts required in subsection (a) exceeds 10%, the irradiation shall be terminated.

#### **§ 228.68. Selection and display of dose monitor units.**

(a) Irradiation may not be possible until a selection of a number of dose monitor units has been made at the control panel.

(b) The preselected number of dose monitor units shall be displayed at the control panel until reset manually to zero before subsequent treatment can be initiated.

#### **§ 228.69. Termination of irradiation by the dose monitoring system or systems.**

(a) A dose monitoring system shall be capable of independently terminating irradiation.

(b) A primary system shall terminate irradiation when the preselected number of dose monitor units has been detected by the system.

(c) A secondary dose monitoring system shall terminate irradiation when either 110% of the preselected number of dose monitor units or 10 dose monitor units (whichever is greater) has been detected by the secondary dose monitoring system.

(d) For new equipment, an indicator on the control panel shall show which dose monitoring system has terminated irradiation.

#### **§ 228.70. Interruption and termination switches.**

The operator shall be able to interrupt or terminate irradiation and equipment movement at any time from the control panel. Following an interruption, the operator shall be able to resume irradiation without reselection of operating conditions.

#### **§ 228.71. Timer.**

(a) The control panel shall have a timer that is graduated in minutes and fractions of minutes or seconds. The timer shall have a preset time selector and an elapsed time indicator.

(b) The timer shall be cumulative and activated only during irradiation and shall retain its reading after irradiation is interrupted or terminated.

(c) The timer shall terminate irradiation when a preselected time has elapsed if the dose monitoring systems fail to do so.

#### **§ 228.72. Selection of radiation type.**

Equipment capable of both X-ray therapy and electron therapy shall meet the following additional requirements:

(1) Irradiation may not be possible until a selection of radiation type and appropriate energy has been made and displayed at the control panel.

(2) An interlock system shall be provided to insure that the equipment can emit only the radiation type which has been selected.

(3) An interlock system shall be provided to prevent irradiation if selected operations carried out in the treatment room do not agree with the selected operations carried out at the control panel.

(4) An interlock system shall be provided to prevent:

(i) Irradiation with X-rays except to obtain a port film when electron applicators are fitted.

(ii) Irradiation with electrons when accessories specific for X-ray therapy are fitted.

(5) For new equipment, a system shall be provided to terminate irradiation if the energy of the electrons striking either the X-ray target or electron window deviates by more than +20% or 3 MeV, whichever is smaller, from the selected nominal energy.

**§ 228.73. Selection of stationary beam therapy or moving beam therapy.**

Equipment capable of both stationary beam therapy and moving beam therapy shall meet the following additional requirements:

(1) Irradiation may not be possible until a selection of stationary beam therapy or moving beam therapy has been made at the control panel.

(2) An interlock system shall be provided to insure that the equipment can operate only in the mode which has been selected.

(3) An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment rooms do not agree with the selected operations carried out at the control panel.

(4) The mode of operation shall be displayed at the control panel.

(5) An interlock system shall be provided to terminate irradiation if one of the following occurs:

(i) Movement of the gantry during stationary beam therapy.

(ii) Movement of the gantry stops during moving beam therapy unless the stoppage is a preplanned function.

(6) An interlock system shall be provided to terminate irradiation if the number of dose monitor units delivered along an arc differs by more than 10% from the selected value. Termination of irradiation shall be as required by § 228.70 (relating to interruption and termination switches).

**§ 228.74. Absorbed dose rate.**

New equipment shall have a system that provides information from which the absorbed dose rate at a reference point in the treatment volume can be calculated. The radiation detectors specified in § 228.66 (relating to beam monitors) may form part of this system. The dose monitor unit rate shall be displayed at the control panel.

**§ 228.75. Calibrations.**

(a) The calibration of systems subject to this subchapter shall be performed in accordance with an established calibration protocol. The calibration protocol published by the American Association of Physicists in Medicine is accepted as an established protocol. Other protocols which are equivalent will be accepted, but the user shall submit that protocol to the Department for concurrence that the protocol is equivalent. The calibration shall be performed as follows:

(1) Before the system is first used for irradiation of a patient and, at time intervals which do not exceed 1 year.

(2) After a change which alters the calibration, spatial distribution or other characteristics of the therapy beam.

(b) The calibration shall be performed by, or under the direct supervision of, a qualified expert.

(c) Calibration radiation measurements required by subsection (a) shall be performed using a dosimetry system meeting the following specifications:

(1) The system has an exposure calibration factor appropriate to the beam energy measured and traceable to a National standard.

(2) The system has been calibrated within the previous 2 years and after servicing that may have affected its calibration.

(3) The system has been calibrated so that an uncertainty can be stated for the radiation quantities monitored by the system.

(4) The system has had constancy checks performed on the system as specified by a qualified expert.

(d) Calibrations made under this section shall be made so that the dose at a reference point in soft tissue may be calculated as accurately as possible but with an uncertainty of no greater than 5%.

(e) The calibration of the therapy beam shall include, but is not limited to, the following determinations:

(1) Verification that the equipment is operating in compliance with the design specifications concerning the light localizer, the side light and back-pointer alignment with the isocenter when applicable, variation in the axis of rotation for the table, gantry and beam limiting device (collimator) system.

(2) The absorbed dose rate at various depths (depth dose) and beam profile measured in water and the beam flatness and symmetry for the range of field sizes used, for each beam energy.

(3) The uniformity of the radiation field and a dependency upon the direction of the useful beam.

(4) Verification of depth-dose data and isodose curves applicable to the specific machine.

(5) Verification of the applicability of transmission factors of accessories such as wedges, shadow trays, compensators and their effects on electron buildup.

(6) The dose per monitor unit, end effect, linearity and dose rate dependence of the dose monitor systems.

(7) For photon beams, the congruence of the light field and the radiation field.

(8) For electron beams, the validity of commissioning data for virtual source distances or effective source-to-skin distances is to be verified at a single electron energy with a beam restriction device. When the replacement of a beam restriction device occurs, the determination will be required for each electron energy.

(f) Records of calibration measurements under subsection (a) and dosimetry system calibrations under subsection (c) shall be preserved for 5 years.

(g) A copy of the latest calibration performed under subsection (a) shall be available at the facility.

**§ 228.76. Spot checks.**

Spot checks shall be performed on systems subject to this subchapter during full calibrations and thereafter once in each calendar month. The spot checks shall meet the following requirements:

(1) The procedures shall be in writing and shall have been developed by a qualified expert.

(2) If a qualified expert does not perform the spot check measurements, the results of the spot check measurements shall be reviewed by a qualified expert within 15 days of the completion of the spot check.

(3) The measurements taken during spot checks shall demonstrate the degree of consistency of the operating characteristics which can affect the radiation output of the system or the radiation delivered to a patient during a therapy procedure.

(4) The spot-check procedures shall specify the acceptable tolerance for each parameter measured in the spot check when compared to the value for that parameter determined in the full calibration.

(5) If a spot check indicates a change in the operating characteristics of a system, as specified in the qualified expert's spot-check procedures, the system shall be recalibrated as required in § 228.75 (relating to calibrations).

(6) Records of spot-check measurements performed under this section shall be maintained by the licensee for 5 years after completion of the spot-check measurements and necessary corrective actions.

(7) Spot check measurements shall be performed using a dosimetry system that has been calibrated in accordance with § 228.75(c). Alternatively, a dosimetry system used solely for spot check measurements may be calibrated by direct intercomparison with a system that has been calibrated in accordance with § 228.75(c). This alternative calibration method shall have been performed within the previous year and after a servicing that may have affected the system calibration.

**APPENDIX A****DETERMINATION OF COMPETENCE**

The following are areas in which an individual shall have expertise for the competent operation of radiation therapy equipment, the administration of radiation therapy treatment and determination of treatment portals:

(1) *Familiarization with equipment.*

(i) Identification of controls.

(ii) Function of each control.

(2) *Radiation protection.*

(i) Personnel protection.

(ii) Use of shielding blocks.

(iii) Understanding of dose units.

(iv) Grids.

(3) *Film processing.*

(i) Ability to produce quality films for use by a physician.

(ii) Knowledge of portal film exposure factors.

(iii) Film processing parameters.

(4) *Procedures.*

(i) Knowledge of anatomy and physiology.

(ii) Knowledge of patient immobilization devices to allow treatment with minimal patient movement.

(iii) Ability to position patient to allow for treatment of desired area.

(5) *Emergency procedures.*

(i) Termination of treatment in event of machine primary and secondary and dose monitoring system failure.

(ii) Termination of treatment in the event of patient movement during treatment.

(6) *Continuing education.* Continuing education annually to include radiation protection.

[Pa.B. Doc. No. 98-1597. Filed for public inspection October 2, 1998, 9:00 a.m.]

**Title 40—LIQUOR****LIQUOR CONTROL BOARD****[40 PA. CODE CH. 13]****Promotion**

The Liquor Control Board (Board) under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), adopts amendments to §§ 13.1 and 13.51 (relating to definitions; and general prohibition).

The Board's regulations amended by this order will define "routine business entertainment" and set limits on the extent to which in-State or out-of-State manufacturers, licensees or trade organizations may give or receive entertainment in the course of conducting business. It permits the giving of specific items, if the items are given without a corresponding obligation on the part of the recipient to purchase alcoholic beverages or to provide any other benefit to the donor. It further prohibits the improper influencing of the recipient to exclude or restrict from sale, the products of any other licensee or manufacturer.

Upon reviewing comments and suggestions initiated by the malt beverage industry after the public comment period, the Board determined that a modification of the language in Annex A of the proposed rulemaking would be appropriate. Therefore, the \$200 per person, per event limitation as well as the six occasions per person limit was replaced with a combined limit of \$800 per licensee, per calendar year. This limitation will be applicable to and will include the licensee, the licensee's employees, spouse and guests.

**Comments:**

Notice of proposed rulemaking was published at 28 Pa.B. 488 (January 31, 1998), with a 30-day written public comment period. Written comments were received from the Independent Regulatory Review Commission (IRRC) and from the Executive Secretary of the Malt Beverage Distributors Association of Pennsylvania (MBDA).

The MBDA expressed concern that the restrictions and limitations imposed on routine business entertainment would affect § 13.51(b). Subsection (b) permits manufacturers of alcoholic beverages and their representatives to participate in the activities of conventions of State or National organizations of retail liquor licensees or distributor or importing distributor malt beverage licensees.

The response of the Board was that routine business entertainment would not amend or alter in any manner the existing subsection (b).

IRRC questioned the reasonableness of and need for § 13.51(c)(6) which requires that the donor of routine business entertainment accompany the recipient on each occasion that entertainment is provided. It is the Board's position that by deleting this requirement as IRRC suggested, the conduct of business would not necessarily be an element of routine business entertainment. Therefore, the Board respectfully declined IRRC's recommendation.

The Board received no other comments either in support of or in opposition to the proposed amendments during the public comment period.

*Fiscal Impact:*

These final-form regulations will not impose additional costs on the regulated community, the State or local governments.

*Regulatory Review:*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 16, 1998, the Board submitted a copy of the notice of proposed rulemaking to IRRC and the Chairpersons of the House Committee on Liquor Control and the Senate Committee on Law and Justice for review and comment. These final-form regulations were submitted to the Chairpersons of the Senate Committee on Law and Justice and the House Committee on Liquor Control and IRRC on August 7, 1998.

These final-form regulations were deemed approved by the House Committee on Liquor Control and the Senate Committee on Law and Justice on August 28, 1998, and were approved by IRRC on September 10, 1998, in accordance with section 5.1(c) of the Regulatory Review Act.

*Contact Person:*

Persons requiring an explanation of the final-form regulations, or information related thereto should contact Jerry Danyluk, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

*Findings:*

The Board finds that:

(1) Public notice of intention to adopt amendments to the administrative regulations by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the final-form regulations set forth in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order:*

The Board, acting under the enabling statute, orders that:

(a) The regulations of the Board, 40 Pa. Code Chapter 13, are amended by amending §§ 13.1 and 13.51 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of the Attorney General for approval as to form and legality as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JOHN E. JONES III,  
*Chairperson*

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 4845 (September 26, 1998).)

**Fiscal Note:** Fiscal Note 54-53 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 40. LIQUOR**

**PART I. LIQUOR CONTROL BOARD**

**CHAPTER 13. PROMOTION**

**Subchapter A. ADVERTISING**

**GENERAL PROVISIONS**

**§ 13.1. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Advertisement*—Any promotion through the medium of newspapers, magazines or similar publications, except that the term does not include the following:

(i) Any label affixed to a container of distilled spirits or wine, or any covering, carton or wrapper of the container.

(ii) Any editorial or other reading matter in any periodical, publication or newspaper for the preparation or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to this subchapter.

*Person*—An individual, partnership, joint-stock company, business trust, association, corporation or other form of business enterprise, including a receiver, trustee or liquidating agent.

*Routine business entertainment*—Meals, beverages, tickets or passes to concerts, theaters, arts, sporting or charitable events provided to licensees, trade organizations or in-State manufacturers by licensees, trade organizations, in-State manufacturers or out-of-State manufacturers. For purposes of this definition, the term "licensee" includes all entities licensed under the Liquor Code including liquor importer licensees and vendor permittees.

*Wine*—Any fermented alcoholic beverage produced from grapes, fruit or other agricultural products, which contains 7.0% or more alcohol by volume, and includes, but is not limited to, still wines, sparkling wines, carbonated wines, imitation wines, vermouth, cider, perry, sake or any product offered for sale as wine.

**GIVING AND ACCEPTING THINGS OF VALUE**

**§ 13.51. General prohibition.**

(a) Except as provided in subsections (b), (c) and § 13.52 (relating to advertising novelties), no in-State or out-of-State manufacturer, licensee or group of licensees, their servants, agents or employees, may directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or employees or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose.

(b) Manufacturers of alcoholic beverages and their servants, agents, employees or representatives are not prohibited from participating in the activities of conventions of State or National organizations of retail liquor licensees, or distributor or importing distributor malt beverage licensees. The participation shall be limited to the payment of registration fees entitling registrant to admission to the convention, to the insertion of advertising in the convention program of the State or National convention and to the furnishing of food, beverages and entertainment to persons who are bona fide registrants at the conventions.

(c) This section does not prohibit an in-State or out-of-State manufacturer, licensee or trade organization from providing another in-State or out-of-State manufacturer, licensee or trade organization routine business entertainment as defined in § 13.1 (relating to definitions). The routine business entertainment shall be subject to the following conditions:

(1) Routine business entertainment shall be provided without a corresponding obligation on the part of the recipient to purchase alcoholic beverages or to provide any other benefit to the donor or to exclude or restrict from sale the products of any other licensee or in-State or out-of-State manufacturer.

(2) The donor, its servants, agents or employees shall accompany the recipient during routine business enter-

tainment. When items such as tickets are donated by manufacturers to importing distributors for the ultimate use of retailers, the donor is considered to be the importing distributor and it is the importing distributor, or its servants, agents or employees, who shall accompany the retailer.

(3) Routine business entertainment that requires or includes an overnight stay is prohibited.

(4) No more than \$800 may be spent in a calendar year on any recipient licensee.

(5) Included under the \$800 yearly entertainment cap for a recipient licensee are the licensee, his spouse, employees and guests.

(6) Licensees, in-State manufacturers and out-of-State manufacturers shall keep complete and accurate records of all expenses incurred and all routine business entertainment received for 2 years. These records shall contain the name of the recipient and donor of the entertainment, the type of routine business entertainment, the date and, in the case of a donor, the amount of expenditure for each occasion.

[Pa.B. Doc. No. 98-1598. Filed for public inspection October 2, 1998, 9:00 a.m.]

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# PROPOSED RULEMAKING

## DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130d]

### Nutrient Management Education Grant Program

The Department of Agriculture (Department), Bureau of Plant Industry (Bureau) in consultation with the State Conservation Commission (Commission) and under the specific authority conferred by section 4 of the Nutrient Management Act (act) (3 P. S. § 1704), proposes to establish Chapter 130d (relating to nutrient management education grant program) instituting regulations relating to the Nutrient Management Education Grant Program (NMEGP). The act bestows upon the Commission the power and duty to regulate, administer and enforce specific areas of the act and grants the Commission the power to delegate the administrative and enforcement authority to certain county conservation districts. (3 P. S. § 1704). Section 4(5) of the act (3 P. S. § 1704(5)), directs the Commission to "... develop and implement, in cooperation with the Department of Agriculture, the board, the Cooperative Extension Service and conservation districts, a program to provide education and technical assistance to the agricultural community ..." Under this requirement, the Commission has entered into a Memorandum of Understanding with the Department which, along with other terms and conditions, grants the Department the authority to develop and administer programs such as the NMEGP.

The proposed regulations will delineate the objectives of the NMEGP and the general conditions for obtaining a Nutrient Management Education Grant. In addition, the proposed regulations will establish guidelines for submission, processing and review of NMEGP applications, notification and recordkeeping requirements and enforcement mechanisms.

#### *Background*

These proposed regulations are intended to establish guidelines and standardize procedures for the awarding and tracking of Nutrient Management Educational Grants. The purpose of the NMEGP is to provide conservation districts with funds to be used for projects which increase the knowledge and awareness of the act and to assist those who are engaged in production agriculture to comply with the act. The NMEGP was developed by the Department and adopted by the Commission, under section 503(d)(3) of the Conservation and Natural Resources Act (71 P. S. § 1340.503(d)(3)) which directs the Department to "... coordinate and assist in the development, implementation and enforcement of programs adopted by the State Conservation Commission that solely affect production agriculture" and to "... develop programs to assist those engaged in production agriculture to comply with the Nutrient Management Act and to act as ombudsman to help resolve issues related to county conservation districts implementation of State Conservation Commission programs solely affecting production agriculture." Implementation of the NMEGP is also in accordance with section 2(2) of the act (3 P. S. § 1702(2)), which directs the Commission to develop and implement educational and outreach programs in conjunction with the Coopera-

tive Extension Service of the Pennsylvania State University, the Department and the conservation districts.

The NMEGP was first developed and implemented by the Department in 1996. The Department had funds available in its budget for agency staffing to coordinate and assist in the development, implementation and enforcement of programs adopted by the Commission. Having the funds available, the Department endeavored to develop a cost-effective educational program which would comply with the statutory requirements of the act and section 503(d)(3) of the Conservation and Natural Resources Act. The NMEGP has been administered through individual contracts with the conservation districts and a memorandum to the comptroller's office, which delineated the purpose of the NMEGP, the eligibility criteria for grants under the NMEGP, the maximum amount of the grants, the reporting requirements and the application process for grants under the NMEGP.

The core concept of the NMEGP was to provide the maximum educational outreach at the minimum costs. The NMEGP was successful in providing educational and technical assistance to the agriculture community and in disseminating information to assist those engaged in production agriculture to comply with the act. As such, the NMEGP has become a very important component in assuring the success of the act. Therefore, in the interest of continuing to carry out its statutory duties and promoting the development of environmentally sound agricultural practices and plan development, the Department has promulgated these proposed regulations and formalized agreements with the conservation districts. This proposed regulations are intended to establish reasonable guidelines, standards, criteria and procedures for the administration and implementation of the NMEGP.

The major features of the proposed regulations are summarized as follows:

#### *Summary of Major Features*

##### *Subchapter A. General Provisions*

Proposed § 130d.1 (relating to authority) sets forth the authority under which the Department proposes to establish this chapter.

Proposed § 130d.2 (relating to objectives) states the overall objectives and purpose of the NMEGP.

Proposed § 130d.3 (relating to definitions) sets forth the proposed words and terms to be defined.

Proposed § 130d.4 (relating to funding) establishes the availability of and criteria for Nutrient Management Education Grant funding.

Proposed § 130d.5 (relating to records) establishes the proposed recordkeeping requirements for grant recipients.

##### *Subchapter B. Grant Program*

Proposed § 130d.11 (relating to general conditions) sets forth the general requirements for submission of grant proposals. This section also contains default procedures, verification requirements and establishes the Department's right to demand the return of grant funds for failure to verify.

Proposed § 130d.12 (relating to submission of application) sets forth the application process, including limita-

tions on grant awards and eligible uses, and delineating the format of the application.

Proposed § 130d.13 (relating to processing of applications) establishes the procedure which the Department will follow when processing an Educational Grant Program application and delineates the duties of the Committee and the Secretary regarding the processing of Educational Grant Program applications. It also sets forth the deadline for applications.

Proposed § 130d.14 (relating to review criteria) delineates the criteria which the Committee shall use when reviewing and evaluating Educational Grant Program applications. These criteria include applicant eligibility guidelines and application ranking guidelines.

Proposed § 130d.15 (relating to notice of disposition of application) establishes the time period in which the Department will notify an Educational Grant Program applicant of the acceptance or rejection of the application.

Proposed § 130d.16 (relating to grant cancellation and right of recovery) will allow the Secretary to cancel an Educational Grant when a determination is made that the funds are not being used properly. In addition, this section sets forth the Department's right to make a claim for any grant moneys not expended in accordance with the grant agreement, the act or this proposed chapter.

Proposed § 130d.17 (relating to deficits) limits the Department's financial obligation to the amount of the Educational Grant.

#### *Fiscal Impact*

##### *Commonwealth*

The proposed regulations will impose minimal costs and have minimal fiscal impact upon the Commonwealth. The Department has a statutory duty to develop, implement and enforce programs which provide educational and technical assistance to the agricultural community and to assist those engaged in production agriculture to comply with the act. The Department has a staff position available to oversee the program and has the funds available to administer the NMEGP.

##### *Political Subdivisions*

The proposed regulations will impose minimal costs on those conservation districts who are interested in applying for grants. The costs most likely will be associated with the preparation of grant proposals and the recordkeeping requirements for those applicants who are approved to receive grant moneys under the NMEGP.

##### *Private Sector*

The proposed regulations will impose no costs and have no fiscal impact upon the private sector. The regulations are intended to assist those engaged in production agriculture to comply with the act.

##### *General Public*

The proposed regulations will impose no costs and have no fiscal impact upon the general public. The regulations are intended to promote environmentally sound agricultural practices which will benefit the general public.

#### *Paperwork Requirements*

The proposed regulations will result in increased paperwork requirements for the recipients of Nutrient Management Educational Program Grants. The recipients of the grants will be required to keep detailed records of all Nutrient Management Educational programs, activities and projects undertaken using the grant monies. The

Department will incur increased paperwork requirements through tracking and recordkeeping requirements and review of applications related to the NMEGP.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 18, 1998, the Department submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request. If IRRC has an objection to any portion of the proposed regulations, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of objections raised.

#### *Contact Person*

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, Nutrient Management Educational Grant Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attn: Melanie Wertz, (717) 772-5218. Comments will be received by the Department for 30 days after publication of this notice in the *Pennsylvania Bulletin*.

#### *Effective Date*

The proposed regulations will become effective upon final adoption.

SAMUEL E. HAYES,  
*Secretary*

**Fiscal Note:** 2-113. (1) Nutrient Management Fund; (2) Implementing Year 1997-98 is \$50,000; (3) 1st Succeeding Year 1998-99 is \$50,000; 2nd Succeeding Year 1999-00 is \$50,000; 3rd Succeeding Year 2000-01 is \$50,000; 4th Succeeding Year 2001-02 is \$50,000; 5th Succeeding Year 2002-03 is \$50,000; (4) FY 1996-97 \$32,000; FY 1995-96 \$N/A; FY 1994-95 \$N/A; (7) Planning, Loans, Grants and Technical Assistance; (8) recommends adoption.

### **Annex A**

#### **TITLE 7. AGRICULTURE**

#### **PART V. BUREAU OF PLANT INDUSTRY**

#### **CHAPTER 130d. NUTRIENT MANAGEMENT EDUCATION GRANT PROGRAM**

##### **Subch.**

##### **A. GENERAL PROVISIONS**

##### **B. GRANT PROGRAM**

##### **Subchapter A. GENERAL PROVISIONS**

##### **Sec.**

- 130d.1. Authority.
- 130d.2. Objectives.
- 130d.3. Definitions.
- 130d.4. Funding.
- 130d.5. Records.

##### **§ 130d.1. Authority.**

The act bestows upon the Commission the power and duty to regulate, administer and enforce specific areas of

the act. Section 4 of the act (3 P.S. § 1704) grants the Commission the power to delegate this administrative or enforcement authority. The act also requires the Commission, "... to develop and implement, in cooperation with the Department of Agriculture, the board, the Cooperative Extension Service and conservation districts, a program to provide education and technical assistance to the agricultural community ..." (3 P.S. § 1704(5)). Under this requirement, the Commission has entered into a Memorandum of Understanding with the Department which, along with other terms and conditions, grants the Department the authority to administer programs such as the NMEGP.

### § 130d.2. Objectives.

It is the intention of the Commission and the purpose of the NMEGP to provide conservation districts with funds to be used for projects which increase the knowledge and awareness of the act, promote the benefits of proper nutrient management techniques and practices and improve farmer participation in nutrient management programs. Funds may also be used for projects that develop improved techniques and practices regarding the handling, storage and application of nutrients or environmentally safe alternative uses of animal manure.

### § 130d.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Nutrient Management Act (3 P.S. §§ 1701—1718).

*Applicant*—A conservation district, having an active delegation agreement with the Commission through the Department and submitting an application for a grant under the NMEGP.

*Best management practices*—A practice or combination of practices determined by the Commission to be effective and practicable (given technological, economic and institutional considerations) to manage nutrients to protect surface water and groundwater taking into account applicable nutrient requirements for crop utilization. The term includes the following:

- (i) Conservation tillage.
- (ii) Crop rotation.
- (iii) Soil testing.
- (iv) Manure testing.
- (v) Diversions.
- (vi) Manure storage facilities.
- (vii) Stormwater management practices.
- (viii) Nutrient application.

*Board*—The Nutrient Management Advisory Board created by section 8 of the act (3 P.S. § 1708).

*Commission*—The State Conservation Commission established by the Conservation District Law (3 P.S. §§ 849—864).

*Committee*—The Interagency Education Committee, which is comprised of members from the Department, the Board, the Cooperative Extension Service, the DEP, the Natural Resource Conservation Service, Conservation Districts and Vocational Agriculture instructors and is responsible for reviewing all grant applications.

*Conservation district or district*—A county conservation district established under the Conservation District Law.

*Cooperative extension*—The Cooperative Extension Service of the Pennsylvania State University.

*DEP*—The Department of Environmental Protection of the Commonwealth.

*Department*—The Department of Agriculture of the Commonwealth.

*Fiscal year*—The Commonwealth's fiscal year, running from the first day of July to the last day of June of the following year.

*Grant*—A Nutrient Management Education Grant.

*Nutrient management plan*—A written site-specific plan which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria established in sections 4 and 6 of the act (3 P.S. §§ 1704 and 1706).

*NMEGP*—The Nutrient Management Education Grant Program.

*Project*—A specific plan set forth on a grant application submitted under the act and this chapter, describing the Nutrient Management Education Program, seminar or field demonstration to be implemented using the grant funds received.

*Secretary*—The Secretary of the Department.

### § 130d.4. Funding.

Grants shall be awarded annually provided funds have been made available to the Department.

### § 130d.5. Records.

(a) The conservation district shall maintain books, records and other evidence pertinent to expenditures and costs incurred in connection with any grant funded under the NMEGP. The books and records shall be maintained according to generally accepted accounting principles.

(b) Financial records, supporting documents, statistical records and other records pertaining to any grant, shall be retained by the conservation district for 3 years from the expiration date of the grant agreement or completion of the project funded by the grant, whichever occurs latest.

(c) The books, records and documents shall be available for inspection or audit at reasonable times by the Department or its authorized agent.

## Subchapter B. GRANT PROGRAM

Sec.

- 130d.11. General conditions.
- 130d.12. Submission of application.
- 130d.13. Processing of application.
- 130d.14. Review criteria.
- 130d.15. Notice of disposition of application.
- 130d.16. Grant cancellation and right of recovery.
- 130d.17. Deficits.

### § 130d.11. General conditions.

(a) *Grant agreement*. Only those conservation districts having current and active delegation agreements in effect, with the Commission through the Department, may submit an application for a grant. Upon the Committee's acceptance of an application and the Secretary's approval, the applicant shall sign a grant agreement setting forth the term and amount of the grant and other terms or conditions as the Department and Commission may require.

(b) *Default*. An applicant who fails to abide by the terms and conditions of the grant agreement or this subchapter or the act shall be in default. In the event of a default, the Secretary may cancel the grant and seek



recovery of the grant funds as set forth in § 130d.16 (relating to grant cancellation and right of recovery). The Secretary may waive a default, after consultation with the Committee, in the event of extenuating circumstances.

(c) *Verification.* An applicant receiving a grant shall maintain books, records and other evidence pertaining to costs incurred for expenditures associated with the project funded by the grant. The books and records shall be maintained according to generally accepted accounting principles. Within 30 days of the project completion date specified in the grant agreement, the grant recipient shall submit to the Department written reimbursement requests based on receipts for the project costs. Grant recipients shall provide to the Department a final report, which includes pertinent documentation, appropriate deliverables produced by the project, as well as a narrative report describing the effectiveness of the project, experience gained and knowledge acquired.

(d) *Failure to verify.* If required documentation is not submitted to the Department as described in subsection (c), the Secretary may demand, in writing, the return by the grant recipient of the entire grant sum or a lesser amount, plus appropriate legal interest. The grant recipient shall repay the sum demanded by the Department within 60 days of a written demand.

#### § 130d.12. Submission of application.

(a) *Limitations on grant applications and awards.*

(1) *Amount of grant.*

(i) A grant may not exceed \$5,000 per fiscal year to any conservation district or to any group of conservation districts submitting a joint application.

(ii) An applicant shall submit one application for each grant project. An applicant may submit more than one application per fiscal year and an applicant may be awarded more than one grant per fiscal year. An applicant may not receive funding for more than \$5,000 in any fiscal year.

(2) *Salaries.* Grant funds may not be used to pay the salary expenses of permanent staff. Grant funds may be used to reimburse the applicant for the cost of temporary staff hired specifically and exclusively to administer the project set forth in the grant application.

(b) *Eligible uses.* A grant shall be used only for the specific project, event or activity delineated in the application. A grant shall only be used to fund projects within the geographic boundaries of this Commonwealth. A grant may be awarded for the following types of projects:

(1) Projects related to providing information concerning methods of preventing nutrient pollution of surface water and groundwater.

(2) Educational programs, seminars or field demonstrations designed to increase the knowledge and awareness of nutrient management regulations, promote the benefits of proper nutrient management techniques and practices or disseminate information regarding the most recent developments in techniques and technologies related to best management practices.

(3) Projects which assist farmers with the development of nutrient management plans which meet the requirements of the act.

(4) Projects which can be replicated throughout this Commonwealth.

(5) Projects which encourage program participation in a cost-effective manner.

(6) Any project determined by the Department to assist in the implementation and acceptance of the act.

(c) *Format of application.* A proposal for a grant will not be considered unless the following information is included:

(1) A cover page containing the project title, organization name, address and phone number, name of the local project coordinator, amount of money being requested and the date of the proposal's submission.

(2) A summary of the project including objectives, target audiences, staff dedicated to the project and other agencies or groups assisting with the project.

(3) A detailed project description including steps involved to complete the project, estimated completion dates, persons responsible for completion of the various steps and methods or procedures that will be used to carry out the project.

(4) A reasonable and accurate statement of the project's estimated cost. This statement shall contain a separate detailed breakdown of the personnel and materials costs, including a separate breakdown on equipment, travel, printing, supplies and other expenses anticipated to be associated with the project. The applicant shall provide documentation or financial statements available to support the estimated project costs.

(5) If temporary staff is being hired to administer the project, a breakdown including hiring and release dates, salaries to be paid, time to be allotted to administering the project and duties and responsibilities of the temporary staff.

(6) A description of the project evaluation criteria and a discussion of how the proposed project meets those criteria as well as a discussion of the methods which will be used to evaluate the success of the project.

#### § 130d.13. Processing of application.

(a) *Competitive program.* The NMEGP is a competitive program. Grant requests and related documents shall be received by the Department and will be reviewed by the Committee and the Secretary. These requests shall be reviewed in accordance with the grant proposal and grant ranking factor requirements outlined in this subchapter.

(b) *Committee.* The Committee will review completed grant applications and supporting documentation and has the power to recommend approval, approval with special conditions or rejection of applications and to recommend issuance of grants in accordance with the general considerations and eligibility criteria of the act.

(c) *Secretary.* The Secretary will review the recommendations made by the Committee and will have final authority to accept or reject the recommendations. The Secretary may also impose restrictions or special conditions upon the issuance of a grant.

(d) *Incomplete or inaccurate applications.* If an application is found to be incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested. If additional data is requested, processing of the application will cease until the requested data is supplied by the applicant. When additional data has been requested, the Committee or the Secretary will terminate the processing of an incomplete

application when the additional data is not supplied within 30 days of the request.

(e) *Deadline for applications.* Applications for grants shall be submitted to the Department by March 1 of the year preceding the fiscal year in which the proposed project will be administered.

#### **§ 130d.14. Review criteria.**

(a) The evaluation of the application by the Committee shall be based on the following criteria:

(1) *Applicant's eligibility.* To be eligible for a grant under this chapter, the applicant shall be:

(i) A conservation district with an active delegation agreement with the Commission through the Department.

(ii) A conservation district possessing the resources and sufficiently educated, trained or experienced personnel to carry out the Nutrient Management Program or Project proposed in the grant application and guarantee that it will participate in the project for the duration of the grant period.

(2) *Ranking of the application.* When reviewing and ranking an application, the following factors will be used:

(i) The relevance of the project to education and outreach regarding the act.

(ii) The innovativeness of the project.

(iii) The scope of the project and the number of people who will be affected by the project as described in the proposal.

(iv) The value to the agricultural community of the project described in the proposal.

(v) The ability of the applicant to provide matching funds or other financial contributions to the project.

(vi) The extent to which each project impacts upon farmers or producers within this Commonwealth.

(vii) The value to those who work directly with farmers and producers.

(viii) Whether the applicant has been, in whole or in part, the recipient of another grant under the act within the same fiscal year.

(ix) Whether other local, county, regional or State organizations are participating in the project or can use the material developed from the project.

(x) The anticipated cost of the project and resource utilization.

#### **§ 130d.15. Notice of disposition of application.**

An applicant will be notified by the Department within 30 days after receipt of an application of a decision to reject or approve the grant, unless the application is incomplete, in which case the Committee will follow the actions prescribed in § 130d.13(d) (relating to processing of application). Notice will be sent by regular mail to the address indicated by the applicant on the grant proposal. An approved applicant will receive a grant agreement, which shall be executed by the applicant and the Department. Funds will be provided based on a reimbursement request upon completion of the project. Grant money shall be used within the dates indicated on the grant agreement.

#### **§ 130d.16. Grant cancellation and right of recovery.**

A grant may be canceled by the Department if the Secretary determines the grant funds are not being spent in accordance with the terms and conditions of the grant

agreement, the act or this chapter. The Department has the right to make a claim for and receive from the grant recipient moneys not expended in accordance with the grant agreement, the act or this chapter and may demand the return of the grant sum, or a portion thereof, plus legal interest thereon.

#### **§ 130d.17. Deficits.**

The Department's financial obligation is limited to the amount of the grant. The Department is not responsible for funding cost overruns incurred by a grant recipient.

[Pa.B. Doc. No. 98-1599. Filed for public inspection October 2, 1998, 9:00 a.m.]

## **INSURANCE DEPARTMENT**

[31 PA. CODE CH. 84a]

### **Minimum Reserve Standards for Individual and Group Health and Accident Insurance Contracts**

The Insurance Department (Department) proposes to amend Chapter 84a (relating to minimum reserve standards for individual and group health and accident insurance contracts) to read as set forth in Annex A, under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) and sections 301.1 and 311.1 of The Insurance Department Act of 1921 (40 P. S. §§ 71.1 and 93).

#### *Purpose*

The purpose of the proposed amendments is to update the chapter by clarifying and modifying the minimum standards for an insurance company in calculating financial reserves for a health and accident insurance contract. The proposed amendments also modify the minimum contract reserve standards for long-term care insurance.

A Department notice, dated July 7, 1994, clarified the applicability of Chapter 84a to contracts issued prior to October 23, 1993. The proposed rulemaking incorporates some minimum standards for reserves provided in the notice and also changes other requirements regarding minimum standards for reserves.

Most of the proposed amendments were patterned after the amendments to the National Association of Insurance Commissioners' (NAIC) Minimum Reserve Standards For Individual and Group Health Insurance Contracts Model Regulation adopted by the NAIC after October 23, 1993.

In developing the proposed rulemaking, comments were solicited and received from the Insurance Federation of Pennsylvania, Inc (IFP). Comments from this organization were taken into consideration in preparing the proposed amendments to Chapter 84a.

#### *Explanation of Regulatory Requirements*

The following is a description of the significant features of the changes contained in the proposed rulemaking:

Section 84a.3 (relating to definitions) was modified to add definitions of "operative date" and "rating block."

Section 84a.6 (relating to contract reserves) establishes minimum standards for contract reserves and defines the contracts that are subject to the minimum standards.

Additionally, the proposed amendments to Chapter 84a permit the use of termination rates that exceed mortality table rates for all contracts. Also, new termination standards are established for individual long-term care contracts and group certificates issued on and after January 1, 1999. The proposed rulemaking clarifies that the minimum standard requirements of Chapter 84a may be applied to a block of contracts, instead of on a per contract basis. Additionally, a minimum standard is established for contracts providing a nonforfeiture benefit. Finally, the proposed rulemaking clarifies the applicability of Chapter 84a to contracts issued prior to October 23, 1993.

Appendix A (relating to specific standards for morbidity, interest and mortality) establishes the minimum standards for morbidity, interest and mortality used in calculating claim, premium and contract reserves. The morbidity standards for group contract health and accident insurance benefits are being modified to clarify that the standards apply to group certificates instead of group policy contracts. The interest standards were modified to clearly identify the interest rate requirement in calculating minimum reserves. The Appendix is amended to clarify the mortality standards for individual contracts and group certificates issued prior to October 23, 1993, and to establish a new mortality standard for long term care individual contracts and group certificates issued on and after January 1, 1999.

#### *Affected Parties*

The proposed amendments to Chapter 84a will apply to life insurance companies, property and casualty insurance companies and fraternal benefit societies marketing health and accident insurance in this Commonwealth.

#### *Fiscal Impact*

##### *State Government*

There will be no increase in cost to the Department due to the adoption of the proposed modifications to Chapter 84a. As part of its solvency surveillance responsibilities the Department currently reviews the methodology used by an insurance company to calculate health and accident reserves to ensure that the reserves are adequate and comply with the minimum standard requirements. The proposed revisions and clarifications of the minimum standards will not create additional staff time to perform the analysis.

##### *General Public*

Since the proposed amendments to Chapter 84a concern the solvency requirements applied to insurance companies, the public will benefit from a financially sound insurance industry in the ability of insurers to fulfill their contractual obligations.

##### *Political Subdivisions*

The proposed amendments will not impose additional costs on political subdivisions. However, because the proposed rulemaking promotes stability in the insurance industry in this Commonwealth, political subdivisions' tax revenues would benefit as a result of fewer insurer insolvencies. Fewer insolvencies would result in less unemployment and would increase incentives for insurers to market new insurance products in this Commonwealth.

##### *Private Sector*

The proposed amendments to Chapter 84a may have some fiscal impact on insurers. To the extent that reserves for business issued prior to October 23, 1993, do not comply with the minimum standard reserve require-

ments, an insurance company will need to increase the reserves. The proposed amendments to the minimum contract reserve standards that apply specifically to long-term care insurance will not affect current business. These amendments apply only to contracts issued after the adoption of this proposed rulemaking. There may be some expense incurred by an insurance company in modifying the reserve calculation system to comply with amended minimum reserve standards.

#### *Paperwork*

The adoption of this proposed rulemaking will not impose additional paperwork on the Department or the insurance industry. The clarifications and new requirements of the amendments apply to the reserve calculations but will not result in additional paperwork.

#### *Effective/Sunset Date*

The proposed rulemaking will become effective upon final adoption and publication in the *Pennsylvania Bulletin* as final rulemaking. No sunset date has been assigned.

#### *Contact Person*

Questions or comments concerning this proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 23, 1998, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria, which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly to review these objections before final publication of the amendments.

M. DIANE KOKEN,  
*Insurance Commissioner*

**Fiscal Note:** 11-190. No fiscal impact; (8) recommends adoption.

#### **Annex A**

#### **TITLE 31. INSURANCE**

#### **PART IV. LIFE INSURANCE**

#### **CHAPTER 84a. MINIMUM RESERVE STANDARDS FOR INDIVIDUAL AND GROUP HEALTH AND ACCIDENT INSURANCE CONTRACTS**

##### **§ 84a.1. Purpose.**

This chapter implements sections 301.1 and 311.1 of The Insurance Department Act of [ **one thousand nine hundred and twenty-one** ] 1921 (40 P. S. §§ 71.1 and

93) which authorize the Commissioner to promulgate regulations specifying appropriate reserve standards.

### § 84a.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

**Department**—The Insurance Department of the Commonwealth.

\* \* \* \* \*

**Long-term care insurance**—An insurance contract advertised, marketed, offered or designed to provide coverage for at least 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis; for functionally necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services, provided in a setting other than an acute care unit of a hospital:

(i) The term includes a policy or rider **[ which ]** that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.

(ii) The term does not include an insurance contract which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement **[ , ]** indemnity coverage, major medical expense coverage, disability income coverage, accident only coverage, specified disease **coverage** or specified accident coverage **[ or limited benefit health and accident coverage ]**.

**Modal premium**—The premium paid on a contract based on a premium term **[ which ]** that could be annual, semiannual, quarterly, monthly or weekly. For example, if the annual premium is \$100 and if, instead, monthly premiums of \$9 are paid, the modal premium is \$9.

\* \* \* \* \*

**Operative date**—The effective date of the approval by the Commissioner for an insurer to use the 1980 CSO Mortality Table to calculate nonforfeiture values and reserves for life insurance contracts.

\* \* \* \* \*

**Rating block**—A grouping of contracts based on common characteristics, such as a policy form or forms having similar benefit designs.

\* \* \* \* \*

### § 84a.4. Claim reserves.

\* \* \* \* \*

(b) *Minimum standards for claim reserves of disability income benefits.*

\* \* \* \* \*

(2) Minimum standards with respect to morbidity are those specified in Appendix A; except that, at the option of the insurer:

\* \* \* \* \*

(ii) For group disability income claims with a duration from date of disablement of more than 2 years but less than 5 years, reserves may, with the approval of the Commissioner, be based upon the insurer's experience for which the insurer maintains underwriting and claim

administration control if the experience is considered credible. For an insurer's experience to be considered credible, the insurer shall be able to provide claim termination patterns over no more than 6 years reflecting at least 5,000 claim terminations during the third through fifth claim durations on reasonably similar applicable policy forms. Reserve tables based on credible experience shall be adjusted regularly to maintain reasonable margins. **[ Demonstrations may be required by the Commissioner based on published literature. ]** The Commissioner, based on published literature, may require demonstrations. The request for approval of a plan of modification to the reserve basis shall include the following:

\* \* \* \* \*

(d) *Claim reserve methods.* **[ Generally accepted or ]** A reasonable actuarial **[ methods ]** method or combination of methods may be used to estimate claim liabilities. The methods used for estimating liabilities generally may be aggregate methods, or various reserve items may be separately valued. Approximations based on groupings and averages may also be employed. Adequacy of the claim reserves shall be determined in the aggregate.

### § 84a.6. Contract reserves.

(a) *General requirements.*

(1) Contract reserves are required for the following:

\* \* \* \* \*

(ii) The individual and group contracts with respect to which, due to the gross premium pricing structure at issue, the value of the future benefits at any time exceeds the value of any appropriate future valuation net premiums at that time. **This evaluation may be applied on a rating block basis if the total premiums for the block were developed to support the total risk assumed and expected expenses for the block each year, and an actuary certifies the premium development. The actuary should state in the certification submitted to the Department with the reserve valuation data that premiums for the rating block were developed so that each year's premium was intended to cover that year's costs without any prefunding. If the premium is also intended to recover costs for any prior years, the actuary shall also disclose the reasons for and magnitude of the recovery. The values specified in this subsection shall be determined on the basis specified in subsection (b).**

**[ (2) Contract reserves are not required for the following:**

(i) **Contracts which cannot be continued after 1 year from issue.**

(ii) **Contracts already in force on October 23, 1993, for which no contract reserve was required under the standards in effect prior to October 23, 1993.**

**(3) ] (2) \* \* \***

**[ (4) ] (3) \* \* \***

(b) *Minimum standards for contract reserves.*

(1) *Morbidity or other contingency.*

\* \* \* \* \*

(ii) Contracts for which tabular morbidity standards are not specified in Appendix A shall be valued using tables established for reserve purposes by a qualified actuary and acceptable to the Commissioner. **The mor-**

idity tables shall contain a pattern of incurred claim costs that reflect the underlying morbidity and may not be constructed for the primary purpose of minimizing reserves.

(iii) If a morbidity standard specified in Appendix A is on an aggregate basis, the morbidity standard may be adjusted to a select and ultimate basis to reflect the effect of insurer underwriting by policy duration. The adjustments shall be appropriate to the underwriting and be acceptable to the Commissioner.

\* \* \* \* \*

(3) *Termination rates.*

(i) Termination rates used in the computation of reserves shall be on the basis of a mortality table as specified in Appendix A except as noted in [ subparagraph ] subparagraphs (ii) and (iii).

(ii) [ Under contracts for which premium rates are not guaranteed, and when the effects of insurer underwriting are specifically used by policy duration in the valuation morbidity standard or for return of premium or other deferred cash benefits total ] Total termination rates may be used at ages and durations when these exceed specified mortality table rates, but not in excess of the lesser of 80% of the total termination rate used in the calculation of the gross premiums or 8%.

(iii) For long-term care individual contracts and group certificates issued on and after January 1, 1999, termination rates in addition to the specified mortality table rates may be used. The termination rates other than mortality may not exceed the following:

(A) For policy years 1 through 4, the lesser of 80% of the voluntary lapse rate used in the calculation of gross premiums and 8 %.

(B) For policy years five and later, the lesser of 100% of the voluntary lapse rate used in the calculation of gross premiums and 4%.

(4) *Reserve method.*

\* \* \* \* \*

(ii) For long-term care insurance, the minimum reserve is the reserve calculated [ on the 1-year full preliminary term method. ] as follows:

(A) For individual contracts and group certificates issued before October 23, 1993, reserves calculated on the 2-year preliminary term method.

(B) For individual contracts and group certificates issued on or after October 23, 1993, reserves calculated on the 1-year preliminary term method.

(iii) For return of premium or other deferred cash benefits in individual contracts and group certificates issued prior to October 23, 1993, the minimum reserve is the reserve calculated on the 2-year preliminary term method [ as follows: ]

(iv) For return of premium or other deferred cash benefits in individual contracts and group certificates issued on or after October 23, 1993, the minimum reserve is the reserve calculated as follows:

(A) \* \* \*

(B) \* \* \*

[ (iv) ] (v) \* \* \*

\* \* \* \* \*

(6) *Nonforfeiture benefits.* The contract reserve on a policy basis may not be less than the net single premium for the nonforfeiture benefits at the appropriate policy duration, when the net single premium is computed according to the specifications in this section.

\* \* \* \* \*

(d) *Tests for adequacy and reasonableness of contract reserves.*

\* \* \* \* \*

(2) If a company has a contract or a group of related similar contracts, for which future gross premiums will be restricted [ by contract ] so that the future gross premiums reduced by expenses for administration, commissions and taxes will be insufficient to cover future claims, the company shall establish contract reserves for the shortfall in the aggregate.

## APPENDIX A

### SPECIFIC STANDARDS FOR MORBIDITY, INTEREST AND MORTALITY

#### I. MORBIDITY.

\* \* \* \* \*

(b) Minimum morbidity standards for valuation of specified group contract health and accident insurance benefits are as follows:

(1) Disability income benefits due to accident or sickness.

(i) *Contract reserves.*

(A) [ Contracts ] Certificates issued prior to January 1, 1993: The same basis, if any, as that employed by the insurer as of January 1, 1993.

(B) [ Contracts ] Certificates issued on or after January 1, 1993: The 1987 Commissioners Group Disability Income Table (87CGDT).

(ii) *Claim reserves.*

(A) For claims incurred on or after January 1, 1993: The 1987 Commissioners Group Disability Income Table (87CGDT).

(B) For claims incurred prior to January 1, 1993: [ Use of the 87CGDT is optional ] Claim reserves are to be determined as provided in § 84a.4(c)(2) (relating to claim reserves).

(2) Other group contract benefits.

(i) *Contract reserves.* For other group contract benefits, morbidity assumptions are to be determined as provided in [ the reserve standards ] § 84a.6(b)(1)(ii) (relating to contract reserves).

(ii) *Claim reserves.* For benefits other than disability, claim reserves are to be determined as provided in [ the standards ] § 84a.4(c)(2).

## II. INTEREST

(a) *Contract reserves.*

(1) The maximum interest rate is the maximum rate permitted by **[law] section 301 of The Insurance Department Act of 1921 (40 P. S. § 71)** in the valuation of whole life insurance issued on the same date as the health and accident insurance contract **and with a guarantee duration of more than 20 years.**

(b) *Claim reserves.*

(1) For claim reserves on policies that require contract reserves, the maximum interest rate is the maximum rate permitted by **[law] section 301 of The Insurance Department Act of 1921**, in the valuation of whole life insurance issued on the same date as the claim incurral date **and with a guarantee duration equal to the maximum benefit period.**

(2) For claim reserves on policies not requiring contract reserves, the maximum interest rate is the maximum rate permitted by **[law] section 301 of The Insurance Department Act of 1921** in the valuation of single premium immediate annuities issued on the same date as the claim incurral date, reduced by 100 basis points.

## III. MORTALITY

(a) **For individual contracts and group certificates issued prior to the insurer's operative date, the mortality basis used shall be according to a table permitted by law for the valuation of whole life insurance issued on the same date as the health and accident insurance individual contract or group certificate.**

(b) **For individual contracts and group certificates issued on or after the insurer's operative date and prior to January 1, 1989, the mortality basis shall be according to either the 1958 CSO Mortality Table or the 1980 CSO Male and Female Mortality Tables, but without use of selection factors.**

**[ (a) Except as provided in ] (c) Unless subsection [ (b) ] (d) applies, the mortality basis used for individual contracts and group certificates issued on or after January 1, 1989, except long-term care individual contracts and group certificates issued on or after January 1, 1999, shall be according to a table, but without use of selection factors, permitted by law for the valuation of whole life insurance issued on the same date as the health and accident insurance contract. For long-term care individual contracts and group certificates issued on or after January 1, 1999, the mortality basis used shall be the 1983 Group Annuity Mortality Table without projection.**

**[ (b) ] (d)** Other mortality tables adopted by the National Association of Insurance Commissioners (NAIC) and promulgated by the Commissioner may be used in the calculation of the minimum reserves if appropriate for the type of benefits and if approved by the Commissioner. The request for approval shall include the proposed mortality table and the reason that the standard specified in subsection **[ (a) ] (c)** is inappropriate.

[Pa.B. Doc. No. 98-1600. Filed for public inspection October 2, 1998, 9:00 a.m.]

## [31 PA. CODE CH. 64]

## Private Passenger Automobile Policy Forms

The Insurance Department (Department) proposes to delete Chapter 64 (relating to private passenger automobile policy forms), to read as set forth in Annex A. The Department is publishing this proposed rulemaking under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); section 354 of The Insurance Company Law of 1921 (40 P. S. § 477b); and sections 4 and 5 of the Unfair Insurance Practices Act (40 P. S. §§ 1171.4 and 1171.5). Chapter 64 sets forth detailed readability requirements for the approval of automobile insurance policies including application of the Flesch Scale testing procedure.

*Purpose*

The purpose of this proposed rulemaking is to delete Chapter 64 and eliminate obsolete and redundant regulations which do not serve any compelling public interest. Adopted in 1975, the chapter requires insurers licensed to do business in this Commonwealth to provide auto insurance policies that are understandable to a person of average intelligence and education. The chapter is limited to private passenger auto insurance policies. The chapter requires the insurer to file auto policy forms that are simply written, clearly worded, legible, use simple words and avoid complex sentences and which include an index at the beginning of the form. The chapter further requires specific standards for policy structure, printing, margins and related legibility requirements. The chapter is unnecessary because its requirements duplicate present statutory requirements and the specific standards of the Flesch Test are unduly burdensome.

Specifically, this chapter duplicates existing authorities governing the filing of insurance policy forms. The Department has the existing authority to review property and casualty policy forms prior to use under section 354 of The Insurance Company Law.

Further, the attempt to prevent specific auto insurance policy abuses by regulation is not necessary because statutory authority to regulate unfair practices in the business of insurance exists under the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15).

Sections 4 and 5 of the Unfair Insurance Practices Act address unfair, deceptive practices or misrepresentation by any person or company engaged in the business of insurance. The existing authorities provide a basis for the Department's disapproval of an insurance policy which is not understandable to a person of average intelligence or education. Finally, the sections requiring policies to make use of specific typeface and conform to highly complex readability standards by means of the application of the Flesch Scale testing procedure are unduly burdensome.

*External Comments*

Comments regarding this proposed rulemaking were solicited from the various trade associations representing the insurance industry in this Commonwealth. Comments were received from the Insurance Federation of Pennsylvania, Inc.

*Fiscal Impact*

The proposed deletion of Chapter 64 is expected to result in a slight reduction in business cost for the property and casualty insurance industry. By deleting

this chapter, the readability testing requirement will be eliminated. Currently each auto form filed with the Department is accompanied by Flesch Test analysis and readability score. This analysis will no longer be performed and submitted. A conservative estimated savings to the insurance industry is \$100,000 annually. This is based on the average of 4,000 auto policy forms filed annually.

#### *Paperwork*

The proposed deletion of Chapter 64 is expected to decrease paperwork requirements for the affected parties because the deletion eliminates unnecessary reporting requirements for the insurance industry.

#### *Affected Parties*

The proposed deletion of Chapter 64 will affect all insurers who are licensed to sell property and casualty insurance in this Commonwealth.

#### *Effectiveness/Sunset Date*

The proposed rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. Because the rulemaking proposes to delete obsolete regulations, no sunset date has been assigned.

#### *Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 23, 1998, the Department submitted a copy of this rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the agency, the Governor and the General Assembly to review these objections before final publication of the rulemaking.

M. DIANE KOKEN,  
*Insurance Commissioner*

**Fiscal Note:** 11-147. No fiscal impact; (8) recommends adoption.

### **Annex A**

### **TITLE 31. INSURANCE**

### **PART II. AUTOMOBILE INSURANCE**

### **CHAPTER 64. (Reserved)**

*(Editor's Note: The Department is proposing to delete the existing text of §§ 64.1—64.14 and Appendix A, which currently appears at 31 Pa. Code pages 64-1—64-8, serial*

*pages (131427), (131428), (146453), (146454) and (131431)—(131434) to read as set forth in Annex A.)*

### **§§ 64.1—64.14. (Reserved).**

[Pa.B. Doc. No. 98-1601. Filed for public inspection October 2, 1998, 9:00 a.m.]

## **[31 PA. CODE CHS. 35, 123 AND 124]**

### **Surplus Lines Insurance**

The Insurance Department (Department) proposes to delete Chapter 35 and 123 (relating to surplus lines agents) and adopt Chapter 124 (relating to surplus lines insurance) to read as set forth in Annex A. The rulemaking is proposed under the authority of Article XVI of the Insurance Company Law (act) (40 P. S. §§ 991.1601—991.1625). The proposed rulemaking sets forth duties and requirements relating to surplus lines agents, producing brokers and surplus lines insurers transacting business in this Commonwealth.

#### *Purpose*

The surplus lines insurance market is intended to provide coverage for nonstandard or unique risks that do not fit the underwriting guidelines of insurers licensed to transact business in the market for standard or traditional insurance coverages (admitted insurers). Surplus lines insurance may be procured through licensed surplus lines agents (surplus lines licensees) from insurers that appear on a list of eligible surplus lines insurers published by the Department. A surplus lines licensee may place coverage as a result of being contacted directly by a consumer or in response to a request from another insurance broker (producing broker) who is dealing directly with the consumer.

The Commonwealth's surplus lines laws and regulations were adopted to establish a system of regulation that permits orderly access to surplus lines insurance in this Commonwealth with reputable and financially sound insurers and provides for adequate protections in the insurance marketplace. The Commonwealth's initial Surplus Lines Insurance Law (act of January 24, 1966, 1965 (P. L. 1509, No. 531)) was replaced by Article XVI of the act in 1992. The purpose of this rulemaking is to replace the regulations adopted under the authority of the initial Surplus Lines Insurance Law with updated regulations consistent with Article XVI of the act.

#### *Explanation of Regulatory Requirements*

Section 124.1 (relating to definitions) defines key terms used to identify the types of insurers that fall within the scope of the chapter and other terms needed to supplement the definitions in section 1602 of the act (40 P. S. § 991.1602). The definitions clarify terms used in the chapter without unnecessary duplication of definitions in the act.

Section 1608 of the act (40 P. S. § 991.1608) requires that insureds be given written notice when all or part of their insurance is placed with a nonadmitted insurer (an eligible surplus lines insurer or other insurer that is not authorized and not licensed to do business in this Commonwealth). The notice must be provided at the time an insured is presented with a quotation and must advise the insured that: (1) the nonadmitted insurer is not licensed by the Department and is subject to only limited regulation; and (2) losses will not be covered by the State guaranty fund if the insurer becomes insolvent. Section

124.2 (relating to notice to insured) requires that the notice be substantially similar in content to that in section 1608 of the act and prominently printed on the first page of the quotation. These provisions are intended to assure that this important information is clearly and accurately conveyed to consumers before they purchase surplus lines insurance.

Section 1618 of the act (40 P. S. § 991.1618) specifically provides that a surplus lines licensee who is granted binding or underwriting authority by an eligible surplus lines insurer is subject to regulations promulgated by the Department. Section 124.3(a) (relating to conditions of binding authority) prohibits a surplus lines licensee from exercising binding authority without a properly executed written contract with the eligible surplus lines insurer that sets forth the terms, conditions and limitations of the surplus lines licensee's binding authority. In addition, § 124.3(a) lists the minimum provisions required in binding authority contracts. These minimum requirements are intended to assure that a contract clearly defines the limits of the surplus lines licensee's authority and either expressly prohibits the licensee from delegating that authority or, if the contract permits delegation, requires the licensee to obtain the insurer's written approval prior to delegating binding authority. Section 124.4(b) and (c) requires that executed copies of the contracts or any instruments delegating authority granted under the contracts be maintained in this Commonwealth and available for examination by the Department for at least 5 years following termination. These retention requirements provide the Department with the access needed to determine compliance with the regulations.

Section 1612(a) of the act (40 P. S. § 991.1612(a)) requires the surplus lines licensee to deliver the insurance contract to the insured or the producing broker upon placing surplus lines insurance. If the insurance contract is not immediately available, the licensee may deliver a cover note, binder or other evidence of insurance that contains at least the information required in section 1612(a) of the act. Section 124.4 (relating to evidence of insurance) requires the surplus lines licensee to deliver the contract or other evidence of insurance within 15-calendar days after either binding the coverage or receiving notice from the insurer that it has assumed the risk. The 15-day requirement establishes a clearly defined time frame for delivery of the contract or other evidence of insurance under section 1612 of the act.

Section 124.4(c) requires the contract or other evidence of insurance to contain a service of process clause with language substantially similar to the language in that subsection. The clause is intended to facilitate compliance with section 1624 of the act (40 P. S. § 991.1624) providing for service of process in actions against surplus lines insurers. Specifically, section 1624(a) of the act requires the contract or other evidence of insurance to contain a provision stating the substance of that section and designating the person on whom process shall be served.

Section 1604(2) of the act (40 P. S. § 991.1604(2)) sets forth three criteria, at least one of which must be satisfied before a surplus lines licensee may place coverage with an eligible surplus lines insurer. Section 1604(2)(i) of the act, the first criterion, permits placement of surplus lines insurance when the full amount or kind of insurance cannot be obtained from admitted insurers, if a diligent search has been made among the admitted insurers who are writing, in this Commonwealth, coverage comparable to the coverage being sought. Section 124.5 (relating to diligent search of admitted insurers)

establishes the minimum duties and requirements that apply to producing brokers and surplus lines licensees in conducting a diligent search of the licensed market.

Current declaration forms required under section 1609(a)(1)(i) of the act (40 P. S. § 991.1609(a)(1)(i)) to be executed by the producing broker (or by the surplus lines licensee when acting as the producing broker) require the producing broker to identify at least three admitted insurers which have declined to insure the risk. Section 124.5(a)(1) will permit a producing broker who has less than three agent appointments to obtain declinations from less than three admitted insurers. While brokers may be appointed by admitted insurers to act as agents, they are not required to maintain appointments. The provisions for less than three declinations have been included in the regulation to recognize that a producing broker with less than three agent appointments may not be able to obtain at least three declinations. In addition, § 124.5(a)(5) permits a producing broker to assume that an admitted insurer has declined a risk if the insurer fails to respond within 5 business days of the broker's request.

Section 124.5(a)(3) requires the producing broker to create a written record of a declination of coverage, either by obtaining a written declination from the insurer or creating a written record to document an oral declination. Section 124.5(a)(4) lists the information required to be included in a written record created to document an oral declination. This documentation is an important part of the record of insurance contracts placed in the surplus lines market under section 1609(a)(1)(i) of the act.

Section 124.5(b) refers to the statutory duties imposed on surplus lines licensees in the conduct of a diligent search of the licensed market. Specifically, the licensee is required to file a written declaration of the licensee's lack of knowledge of how the coverage could have been procured from admitted insurers. In addition, if a surplus lines licensee acts as both the producing broker and the surplus lines licensee, the licensee must also execute the declaration form applicable to the producing broker. These references have been included in the regulation to integrate and clarify the various statutory duties related to a diligent search of admitted insurers when coverage is placed in the surplus lines market under section 1604(2)(i) of the act.

Section 124.5(c) establishes qualification requirements for persons authorized to decline coverage on behalf of admitted insurers. The person must be a full-time employee of the admitted insurer with underwriting responsibility or a full-time employee of an underwriting manager for the insurer. In addition, § 124.5(d) prohibits declinations from being obtained from an affiliate of an admitted insurer that has already declined the risk and also prohibits surplus lines insurance from being placed with an affiliate of a declining insurer, except when the affiliated insurers are independent of each other as defined in § 124.5(d)(3). These restrictions are needed to assure that a proper diligent search is made of the admitted market before coverage is placed in the surplus lines market under the criterion in section 1609(a)(1)(i) of the act.

Section 1604(2)(ii) of the act permits coverage to be placed in the surplus lines market if no admitted insurers are writing coverage comparable to the coverage being sought. Under this second criterion for placement of surplus lines insurance, the Insurance Commissioner has published an export list of the coverages declared to be generally unavailable in the admitted market. (See 27



Pa.B. 2795 (June 7, 1997).) Section 124.6 (relating to export list coverages) clarifies that the diligent search requirement in section 1604(2)(i) of the act and related reporting requirements do not apply to the placement of coverage that appears on the export list. Within 45 days of placing coverage that appears on the export list, § 124.6(c) requires the surplus lines licensee to file a copy of the declaration page of the policy or other evidence of insurance with the Department.

Section 1604(2)(iii) of the act, the third criterion under which coverage may be placed in the surplus lines market, permits coverage to be placed in the surplus lines market if it is a unique form of coverage not available in the admitted market. Section 124.7 (relating to unique forms of coverages) requires the surplus lines licensee to file a declaration reporting these transactions in a form prescribed by the Department within 45 days of placing the coverage. The filing requirements relating to export list and unique forms of coverage will allow the Department to monitor the placement of these coverages in the surplus lines market.

Section 1615(b)(4) of the act (40 P. S. § 991.1615(b)(4)) requires a surplus lines licensee to file with the Department and maintain a surety bond in the amount of at least \$50,000. The bond is to be conditioned that the surplus lines licensee will conduct business in accordance with Article XVI of the act and will promptly remit the taxes as provided by law. Section 1621 of the act (40 P. S. § 991.1621) imposes a 3% tax on all premiums charged for insurance placed with an eligible surplus lines insurer or other nonadmitted insurer. The surplus lines licensee is responsible for the collection of the 3% tax from the insured or the producing broker at the time of delivery of the initial contract or other evidence of insurance. On or before January 31 each year, the surplus lines licensee is required to file a report of all transactions during the previous calendar year with the tax due for those transactions. Section 124.8(a) (relating to surplus lines licensee bond requirements) requires a bond in the amount of at least \$50,000 for the initial term of a license. Section 124.8(b) requires the amount of the bond for renewal of a license to be based on the total amount of the licensee's taxable surplus lines premiums for the preceding calendar year, as determined by a table in § 124.8(b). These requirements are needed to assure that the required minimum amount of a licensee's bond is commensurate with the licensee's obligation to remit the 3% premium tax.

Section 124.9 (relating to requirements to qualify as an eligible surplus lines insurer) sets forth requirements that insurers must meet to be considered under section 1605(b) of the act (40 P. S. § 991.1605(b)) for placement on the Department's list of eligible surplus lines insurers. In addition to the requirements of Article XVI of the act, the insurer must be licensed in its domiciliary jurisdiction to transact the kinds of insurance it proposes to provide in this Commonwealth. The insurer also must have been engaged in transacting surplus lines insurance in at least one jurisdiction, or have been an affiliate of an admitted insurer, for the 3 years immediately preceding the insurer's application for inclusion on the Department's list. Under section 1605(a)(2)(i) of the act (40 P. S. § 991.1605(a)(2)(i)) an alien insurer is required to maintain an irrevocable trust fund in the United States in an amount not less than currently required by the National Association of Insurance Commissioners (NAIC) for the protection of all policyholders in the United States. Section 124.9(3) requires alien insurers to provide evi-

dence of their inclusion on the list of alien insurers that have met the NAIC's criteria. The qualifications in the regulation are consistent with the eligibility requirements in section 1605 of the act and assure that insurers transacting surplus lines business in this Commonwealth are reputable and financially sound.

Section 124.10 (relating to eligible surplus lines insurer filing requirements) lists the information that must be included in applications by foreign and alien insurers for consideration for inclusion on the Department's list of eligible surplus lines insurers. After placement on the Department's list, the insurers are required to provide the Department with any updates to the information within the time frames provided in § 124.10(b) and (d). The information required in this section will enable the Department to assess the financial condition of applicants and determine whether the applicants satisfy the requirements of Article XVI for the act and the regulations, including the trust fund requirements applicable to alien insurers.

#### *External Comments*

In drafting this updated rulemaking, the Department requested comments from the Pennsylvania Surplus Lines Association, surplus lines associations in 12 other states, The Insurance Federation of Pennsylvania, Inc., the Professional Insurance Agents Association, the Independent Insurance Agents of Pennsylvania and a number of firms appointed as United States contacts for alien surplus lines insurers. The comments received in response to the Department's request were considered in the development of this proposed rulemaking.

#### *Fiscal Impact*

The reporting, recordkeeping and qualification requirements in Chapter 124 will impose no significant costs on surplus lines licensees, producing brokers or surplus lines insurers transacting business in this Commonwealth. Department costs associated with the review of applications and reports filed under Chapter 124 will not increase as a result of this proposed rulemaking. The chapter will have a beneficial fiscal impact by eliminating current costs imposed on regulated parties and the Department related to the filing and review of binding authority contracts. The chapter will serve to enhance the protection of Commonwealth revenues by imposing minimum bonding requirements consistent with premium tax liability. The chapter will not impact on costs to political subdivisions. While the chapter has no immediate fiscal impact on the general public, the general public will benefit to the extent that adoption of the chapter enhances the efficiency and effectiveness of the Commonwealth's regulation of surplus lines insurance under Article XVI of the act.

#### *Paperwork*

Chapter 124 eliminates filing requirements related to binding authority contracts. The chapter will require producing brokers to maintain records to demonstrate that a diligent search of licensed insurers was made before coverage is placed in the surplus lines market. These recordkeeping requirements provide guidance to producing brokers in efforts to conduct a proper search of the licensed market and enhance compliance with the statutory conditions that must be met before coverage is placed in the surplus lines market. The requirements will also enhance the Department's ability to monitor transactions in the surplus lines market.

### *Persons Regulated*

This proposed rulemaking applies to all surplus lines agents, producing brokers and surplus lines insurers transacting business in this Commonwealth.

### *Contact Person*

Questions or comments regarding this proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Office of Special Projects, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 23, 1998, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. In addition to submitting this proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations by the Department, the General Assembly and the Governor of objections raised.

M. DIANE KOKEN,  
*Insurance Commissioner*

**Fiscal Note:** 11-170. No fiscal impact; (8) recommends adoption.

## **Annex A**

### **TITLE 31. INSURANCE**

#### **PART I. GENERAL PROVISIONS**

##### **CHAPTER 35. (Reserved)**

*(Editor's Note: The Insurance Department proposes to delete Chapter 35, §§ 35.1—35.4, 35.11—35.13, 35.21 and 35.22 as set forth at 31 Pa. Code pps. 35-1 to 35-7, serial pps. (195127) to (195133).)*

**§§ 35.1—35.4 (Reserved).**

**§§ 35.11—35.13. (Reserved).**

**§ 35.21. (Reserved).**

**§ 35.22. (Reserved).**

#### **PART VIII. MISCELLANEOUS PROVISIONS**

##### **CHAPTER 123. (Reserved)**

*(Editor's Note: The Insurance Department proposes to delete Chapter 123, §§ 123.1, 123.4, 123.11, 123.12, 123.21, 123.31—123.42 and 123.51—123.63 as set forth at 31 Pa. Code pps. 123-1 to 123-14, serial pps. (227532) to (227544).)*

**§ 123.1. (Reserved)**

**§ 123.4. (Reserved).**

**§ 123.11. (Reserved).**

**§ 123.12. (Reserved).**

**§ 123.21. (Reserved).**

**§§ 123.31—123.42. (Reserved).**

**§§ 123.51—123.63. (Reserved).**

### **CHAPTER 124. SURPLUS LINES INSURANCE**

Sec.

124.1. Definitions.

124.2. Notice to insured.

124.3. Conditions of binding authority.

124.4. Evidence of insurance.

124.5. Diligent search of admitted insurers.

124.6. Export list coverages.

124.7. Unique forms of coverages.

124.8. Surplus lines licensee bond requirements.

124.9. Requirements to qualify as an eligible surplus lines insurer.

124.10. Eligible surplus lines insurer filing requirements.

#### **§ 124.1. Definitions.**

(a) The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

*Act*—Article XVI of The Insurance Company Law of 1921 (40 P. S. §§ 991.1601—991.1625).

*Alien insurer*—An insurer incorporated or organized under the laws of a foreign nation or of a province or territory other than a state or a territory of the United States or the District of Columbia.

*Binding authority*—The authority delegated to a surplus lines licensee by an eligible surplus lines insurer to obligate the eligible surplus lines insurer to accept a particular risk.

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*Department*—The Insurance Department of the Commonwealth.

*Eligible surplus lines insurer list*—The most recent list of eligible surplus lines insurers published by the Department under section 1605(b) of the act (40 P. S. § 991.1605(b)).

*Foreign insurer*—An insurer, other than an alien insurer, not incorporated or organized under the laws of the Commonwealth. For purposes of this chapter, the term also includes a United States branch of an alien insurer which branch is not entered through and licensed to transact insurance or reinsurance in this Commonwealth.

(b) Unless the context otherwise requires, other terms found in this chapter are used as defined in the act.

#### **§ 124.2. Notice to insured.**

The written notice required to be given to the insured under section 1608 of the act (40 P. S. § 991.1608) shall be:

(1) Substantially similar in content to that set forth in section 1608(1) and (2) of the act.

(2) Prominently printed on the first page of the quotation.

#### **§ 124.3. Conditions of binding authority.**

(a) A surplus lines licensee may not exercise binding authority in this Commonwealth on behalf of an eligible surplus lines insurer unless there is in force a written contract executed by all parties to the contract setting forth the terms, conditions and limitations governing the exercise of binding authority by the surplus lines licensee. The written contract shall, at a minimum, contain the following:

(1) A description of the classes of insurance for which the surplus lines licensee holds binding authority.

(2) The geographical limits of the binding authority.

(3) The maximum dollar limitations on the binding authority for any one risk for each class of insurance.

(4) The maximum policy period for which the surplus lines licensee may bind a risk.

(5) A prohibition against delegation of binding authority by the surplus lines licensee or, if the binding authority is delegable by the surplus lines licensee, a prohibition against delegation of binding authority by the surplus lines licensee without the prior written approval of the eligible surplus lines insurer.

(6) A provision in the following or substantially similar language:

It is understood and agreed that all insurance placed pursuant to this agreement on risks resident, located, or to be performed in this Commonwealth, shall be effected and written in accordance with Article XVI of the Act of May 17, 1921, P. L. 682, No. 284 (40 P. S. Section 991.1601—991.1625).

(b) An executed copy of the written contract shall be maintained by the surplus lines licensee in its office in this Commonwealth. The copy shall be available at all reasonable times for examination by the Department without notice for at least 5 years following termination of the contract.

(c) If a surplus lines licensee, who is qualified under this chapter to exercise binding authority on behalf of the eligible surplus lines insurer, delegates binding authority to any other surplus lines licensee, the instrument delegating binding authority shall specifically identify the binding authority agreement between the delegating surplus lines licensee and the eligible surplus lines insurer. An executed copy of the instrument delegating binding authority shall be maintained by both the surplus lines licensee delegating binding authority and the surplus lines licensee to whom the authority is delegated in their offices in this Commonwealth. The copy shall be available at all reasonable times for examination by the Department without notice for at least 5 years following termination of the contract.

#### § 124.4. Evidence of insurance.

(a) Section 1612 of the act (40 P. S. § 991.1612) requires the surplus lines licensee, upon placing surplus lines insurance, to deliver the contract of insurance to the insured or to the producing broker. A cover note, binder or other evidence of insurance shall be delivered by the surplus lines licensee if the contract of insurance is not immediately available.

(b) Delivery of the contract or other evidence of insurance by the surplus lines licensee shall occur within 15 calendar days after:

(1) Coverage has been bound by the surplus lines licensee, if the surplus lines licensee holds binding authority on behalf of the eligible surplus lines insurer.

(2) The surplus lines licensee has received written notification from the eligible surplus lines insurer or other nonadmitted insurer that it has assumed the risk, if the surplus lines licensee does not hold binding authority on behalf of the eligible surplus lines insurer.

(c) Under section 1624 of the act (40 P. S. § 991.1624), a contract or other evidence of insurance delivered by the

surplus lines licensee shall contain a service of process clause substantially similar to the following:

#### SERVICE OF PROCESS CLAUSE

It is agreed that in the event of the failure of the Insurer(s) or Underwriter(s) herein to pay any amount claimed to be due hereunder, the Insurer(s) or Underwriter(s) herein, at the request of the Insured (or reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give such court jurisdiction, and all matters arising hereunder shall be determined in accordance with the law and practice of such court. It is further agreed that in any such action instituted against any one of them upon this contract, Insurer(s) or Underwriter(s) will abide by the final decision of such court or of any appellate court in the event of an appeal.

Service of process shall be made pursuant to the procedures provided by 42 Pa.C.S. Ch. 53 Subch. B (relating to interstate and international procedure). When making service of process by mail, such process shall be mailed to \_\_\_\_\_. The above-named is authorized and directed to accept service of process on behalf of the Insured(s) or Underwriter(s) in any such action or upon the request of the insured (or reinsured) to give a written undertaking to the insured (or reinsured) that it or they will enter a general appearance for the Insurer(s) or Underwriter(s) in the event such an action shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America, which makes provisions therefor, the Insured(s) or Underwriter(s) hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as the true and lawful attorney upon whom any lawful process may be served in any action, suit or proceeding instituted by or on behalf of the insured (or reinsured) or any beneficiary hereunder arising out of his contract of insurance (or reinsurance), and hereby designates the above-named as the person on whom such process or a true copy thereof shall be served.

#### § 124.5. Diligent search of admitted insurers.

Under section 1604(2)(i) of the act (40 P. S. § 991.1604 (2)(i)), surplus lines insurance may be procured through a surplus lines licensee from nonadmitted insurers if a diligent search is made among the admitted insurers who are writing, in this Commonwealth, coverage comparable to the coverage being sought. The following minimum requirements and conditions apply to the conduct of a diligent search among admitted insurers under section 1604(2)(i) of the act.

(1) Under section 1609(a)(1)(i) of the act (40 P. S. § 991.1609(a)(1)(i)), the producing broker shall execute and forward to the surplus lines licensee a written statement, in a form prescribed by the Department, declaring that a diligent effort to procure the desired coverage from admitted insurers was made.

(i) At a minimum, the producing broker shall obtain declinations from admitted insurers with which the producing broker holds agent appointments and which are writing, in this Commonwealth, coverage comparable to the coverage being sought in accordance with the following table:

<i>Number of Agent Appointments</i>	<i>Number of Required Declinations</i>
0	1
1	1
2	2
3 or more	3

(ii) A producing broker who obtains less than three declinations shall attach a notarized statement, affirming the number of agent appointments held, to the declaration form required under section 1609(a) of the act.

(iii) A producing broker who obtains a declination from an admitted insurer shall either obtain the declination in writing from the admitted insurer or create a written record of an oral declination by the admitted insurer. A written record of an oral declination shall be made by the person who initially received the declination or by another person working for the business from information transmitted by the person who received the declination. A declination shall be obtained from the admitted insurer or recorded by the producing broker at or near the time of receipt of the declination and maintained in the regular course of business.

(iv) A written record documenting an oral declination shall include:

(A) The name, office location and phone number of the admitted insurer or firm acting in the capacity of underwriting manager for the admitted insurer.

(B) The name and position of the person contacted.

(C) The date of contact.

(D) An explanation of the declination.

(v) If an admitted insurer fails to respond within 5 business days after first being contacted by the producing broker, the producing broker may assume that the insurer has declined to write the risk. The producing broker shall create a written record of the contact, including the manner in which contact was made and the information required under subparagraph (iv)(A)—(C).

(2) Under section 1609(a)(2) of the act, the surplus lines licensee shall file with the Department a written declaration of the licensee's lack of knowledge of how the coverage could have been procured from admitted insurers and shall simultaneously file the written declaration of the producing broker required under section 1609(a)(1) of the act. Under section 1609(a)(3) of the act, if the surplus lines licensee acts as both the producing broker and surplus lines licensee in a particular transaction, the surplus lines licensee is required to execute the declarations required under section 1609(a)(1) and (2) of the act.

(3) A declination of coverage by an admitted insurer shall be made by a person who is a full-time employee of the admitted insurer and who has underwriting responsibility for that admitted insurer or by a full-time employee of a firm acting in the capacity of underwriting manager for the admitted insurer.

(4) For purposes of this paragraph, the term "affiliate" is used as defined in section 1401 of The Insurance Company Law of 1921 (40 P. S. § 991.1401).

(i) A declination may not be obtained from an admitted insurer which is an affiliate of an admitted insurer from which a declination has already been obtained.

(ii) Surplus lines insurance may not be placed with a nonadmitted insurer that is an affiliate of an admitted insurer from which a declination has been obtained.

(iii) The restrictions in paragraph (1)(i) and (ii) do not apply if the affiliated insurers write independently of each other using separate and independently developed underwriting criteria and marketing plans, and for underwriting purposes, compete with each other for the same type of coverage or class of insurance.

#### **§ 124.6. Export list coverages.**

(a) Under section 1604(2)(ii) of the act (40 P. S. § 991.1604(2)(ii)), the Commissioner may create and maintain an export list of insurance coverages for which the full amount or kind of insurance cannot be obtained from admitted insurers.

(b) The diligent search requirement of section 1604(2)(i) of the act and the reporting requirements of section 1609(a) of the act (40 P. S. § 991.1609(a)) do not apply to the placement of an insurance coverage which appears on the export list.

(c) Within 45 calendar days after the placement of an insurance coverage which appears on the most recent export list published by the Commissioner, the surplus lines licensee shall file with the Department or its designee a copy of the declaration page of the policy, cover note, binder or other evidence of insurance delivered by the surplus lines licensee in accordance with section 1612(a) of the act (40 P. S. § 991.1612(a)) with the word "EXPORT" stamped in red letters in the upper right hand corner.

#### **§ 124.7. Unique forms of coverages.**

Under section 1604(2)(iii) of the act (40 P. S. § 1604(2)(iii)), surplus lines insurance may be procured through a surplus lines licensee from nonadmitted insurers if the kind of insurance sought to be obtained from admitted insurers requires a unique form of coverage not available in the admitted market. Within 45-calendar days after a unique form of coverage has been placed, the surplus lines licensee shall file with the Department or its designee, a written declaration reporting the transaction in a form prescribed by the Department.

#### **§ 124.8. Surplus lines licensee bond requirements.**

(a) The bond required under section 1615(b)(4) of the act (40 P. S. § 991.1615(b)(4)) to be maintained concurrent with the term of a surplus lines agent's license shall be in the amount of at least \$50,000 for the initial term of the license.

(b) The amount of the bond required for renewal of a surplus lines agent's license shall be based on the total taxable surplus lines premium volume of the surplus lines agent during the preceding calendar year as reported to the Department of Revenue under section 1621 of the act (40 P. S. § 991.1621) and determined by using the following table:

<i>Total Taxable Surplus Lines Premium Volume</i>	<i>Required Minimum Amount of Bond</i>
\$0—\$1,999,999	\$50,000
\$2,000,000—\$3,999,999	\$100,000
\$4,000,000—\$5,999,999	\$150,000
\$6,000,000—\$7,999,999	\$200,000
\$8,000,000—and over	3% of the total taxable surplus lines premium volume of the surplus lines licensee during the preceding calendar year or other amount acceptable to the Commissioner.

**§ 124.9. Requirements to qualify as an eligible surplus lines insurer.**

(a) To be considered for placement on the most recent eligible surplus lines insurer list, a nonadmitted insurer shall meet the requirements of the act and this chapter. The nonadmitted insurer shall meet the following requirements:

(1) Be currently licensed as an insurer in the state or country of its domicile for the kinds of insurance which it proposes to provide in this Commonwealth.

(2) Have been either engaged in doing the business of surplus lines insurance in one or more jurisdictions for at least 3 years immediately preceding the filing of an application to be an eligible surplus lines insurer; or be an affiliate of an admitted insurer which has been so admitted for at least 3 years immediately preceding seeking approval to do business in this Commonwealth.

(b) In addition to the requirements in subsection (a), an alien insurer shall provide documentation evidencing its inclusion on the most recent quarterly listing of nonadmitted alien insurers which have met the criteria in the plan of operation adopted by the National Association of Insurance Commissioners International Insurers Department, or successor organization.

**§ 124.10. Eligible surplus lines insurer filing requirements.**

(a) A request to consider a foreign nonadmitted insurer for placement on the Department's eligible surplus lines insurer list shall be made in writing by a surplus lines licensee and shall include the following:

(1) *Charter.* A copy of the charter of the nonadmitted insurer or similar document and any amendments, additions and deletions thereto certified by the corporate secretary of the nonadmitted insurer.

(2) *Certificate of authority.* A copy of the certificate of authority of the insurer or similar document setting forth its authority to issue policies and insure risks in the jurisdiction in which the insurer is incorporated, formed or organized.

(3) *Financial statement.*

(i) A copy of the latest annual financial report or statement of the insurer signed by the officers of the insurer and filed with the insurance regulatory authority or other governmental authority in the jurisdiction in which the insurer is incorporated, formed or organized. The copy shall include all supplemental reports, exhibits and schedules required as part of the annual statement filing and shall be certified as provided under section 1605(3) of the act (40 P. S. § 991.1605(3)).

(ii) A copy of each subsequent quarterly financial report or statement of the insurer signed by the officers of the insurer and filed with the insurance regulatory authority or other governmental authority in the jurisdiction in which the insurer is incorporated, formed or organized.

(4) *Report of examination.* A copy of the most recent report of examination of the insurer conducted by the insurance regulatory authority or similar governmental authority requiring the examination and certified by the proper official of that authority.

(5) *Biographical information.* Biographical data for each officer, director, person in managerial control, and like individual on a form provided by the Department.

(6) *Kind of insurance.* A written statement by an officer of the insurer identifying the kinds of insurance covers the insurer intends to write and the types of risks the insurer intends to insure in this Commonwealth.

(7) *Designee for service of process.* A written designation of the name of the individual employed by the insurer or other appropriate representative to whom all lawful process shall be mailed. The designee shall maintain a legal residence, domicile or office in the United States.

(8) *Additional information.* Additional information as may be required by the Commissioner to determine whether the insurer meets the standards and requirements of the act and this chapter.

(b) After placement on the eligible surplus lines insurer list, a foreign insurer shall submit to the Department through a surplus lines licensee:

(1) Changes or additions, or both, to the information in subsection (a)(7) within 10-calendar days of the occurrence.

(2) Changes or additions, or both, to the information in subsections (a)(1) and (5) within 30-calendar days of the occurrence.

(3) A certified copy of the information in subsection (a)(3)(i) within 30-calendar days after the date required for filing in its domiciliary jurisdiction. A copy of the information in subsection (a)(2) shall accompany the filing.

(4) A copy of the information in subsection (a)(3)(ii) within 45-calendar days from the close of the quarter for which the report is prepared.

(5) A certified copy of the information in subsection (a)(4) within 30-calendar days of the date it became a public document.

(6) Additional items as may be required by the Commissioner to determine whether the insurer continues to meet the standards under the act.

(c) A request to consider an alien nonadmitted insurer for placement on the Department's eligible surplus lines insurer list shall be made in writing by a surplus lines licensee and shall include the following:

(1) *Charter.* A copy of the charter of the insurer or similar document and any amendments, additions and deletions thereto certified by the corporate secretary of the insurer.

(2) *Certificate of authority.* A copy of the certificate of authority of the insurer or similar document setting forth its authority to issue policies and insurer risks in the jurisdiction in which the insurer is incorporated, formed or organized.

(3) *Annual financial statement.*

(i) Two copies of the latest annual financial report of the insurer signed by the officers of the insurer and filed with the insurance regulatory authority or other governmental authority in the jurisdiction in which the insurer is incorporated, formed or organized. One copy of the financial report or statement shall be expressed in language and currency of the place of incorporation, formation or organization of the insurer and the other copy prepared and expressed in the English language and United States currency at the current rate of exchange as of the statement date. Certification of the financial report or statement shall be in accordance with section 1605(3) of the act (40 P. S. § 991.1605(3)).

(ii) A copy of the latest annual financial statement of the insurer in the standard reporting format prescribed by the National Association of Insurance Commissioners' International Insurers Department, or successor organization.

(4) *Trust fund agreement.*

(i) A copy of the trust fund agreement concerning the trust fund which the insurer maintains in the United States in either a National bank or a member of the Federal Reserve System in an amount as set out in the act for the protection of all of its policyholders in the United States, consisting of cash, securities, letters of credit or investments of substantially the same character and quality as those which are eligible investments for admitted insurers authorized to write like kinds of insurance in this Commonwealth.

(ii) The trustees of the trust fund shall give written verification of the amount initially deposited and presently on deposit by the insurer in the trust fund. The trustees shall immediately give written notification to the Department at any time the trust fund deposit is less than the minimum requirement as provided for in section 1605(a)(2)(i) of the act.

(5) *Biographical sketches.* Biographical data for each officer, director, person in managerial control, and like individual on a form provided by the Department.

(6) *Kind of insurance.* A written statement by an officer of the insurer identifying the kinds of insurance covers the insurer intends to write and the types of risks the insurer intends to insure in this Commonwealth.

(7) *Designee for service of process.* A written designation of the name of the individual employed by the insurer or other appropriate representative to whom all lawful process shall be mailed. The designee shall maintain a legal residence, domicile or office in the United States.

(8) *Additional information.* Additional information as required by the Commissioner to determine whether the insurer meets the standards and requirements of the act and this chapter.

(d) After placement on the eligible surplus lines insurer list, an alien insurer shall submit the following to the Department through a surplus lines licensee:

(1) Changes or additions, or both, to the information in subsection (c)(7) and (4)(i) within 10-calendar days of the occurrence.

(2) Changes or additions, or both, to the information in subsection (c)(1) and (5) within 30-calendar days of the occurrence.

(3) A certified copy of the information in subsection (c)(3)(i) within 30-calendar days after the date required for filing in its domiciliary jurisdiction. A copy of the information in subsection (c)(2), (3)(ii) and (4)(ii) shall accompany the filing.

(4) Additional items as required by the Commissioner to determine whether the insurer continues to meet the standards under the act.

[Pa.B. Doc. No. 98-1602. Filed for public inspection October 2, 1998, 9:00 a.m.]

# STATE BOARD OF EDUCATION

[22 PA. CODE CHS. 14, 16 AND 342]

## Gifted Education; Special Education Services and Programs

The State Board of Education (Board) proposes to delete the gifted education provisions of Chapters 14 and 342 (relating to special education services and programs) and add a new Chapter 16 (relating to gifted education) to read as set forth in Annex A, under the authority of sections 1371, 2601-B and 2602-B of the Public School Code of 1949 (24 P.S. §§ 13-1371, 26-2601-B and 26-2602-B).

These proposed amendments set forth requirements and procedures for the identification of, and delivery of services and programs to, students who are mentally gifted and therefore require specially designed instruction.

### Purpose

The existing rules governing gifted education are in Chapters 14 and 342. These chapters govern all children with exceptionalities including those children with disabilities who are protected under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—1485). Therefore, under current rules, the disability-specific mandates of Federal law and regulations are intertwined with and become requirements for students who are gifted in this Commonwealth. Many of the disability-specific mandates are unnecessary for the proper education of gifted students, and may limit the ability of local school districts to implement effective gifted education programs. The separation of gifted education from Chapters 14 and 342 does not alter statutory protections for gifted education, nor creates a need to relitigate established case law in this Commonwealth as it pertains to students who are gifted.

The provisions of proposed Chapter 16 are sufficient to govern the gifted education services and programs. Thus, no accompanying standards are being promulgated and sections specific to gifted education in standards Chapter 342 are proposed to be deleted.

### Requirements

The proposed amendments maintain most of the requirements from Chapters 14 and 342, with modifications necessary to create a distinction between gifted education and special education. Continuing requirements include provisions for individualized education programs, multidisciplinary team, multidisciplinary evaluation, personnel requirements, placement in private schools, procedural safeguards, exceptions for experimental programs, duties and responsibilities of the Department and planning requirements for gifted education. Major differences between existing regulations and proposed regulations include the following sections:

§ 16.7 (relating to special education). This section clarifies that the new chapter of regulations does not diminish a student's rights under Chapters 14 and 342 or the Individuals with Disabilities Education Act. However, for students who are both gifted and eligible for special education, there is no need for school districts to attempt to implement the requirements of Chapter 16 and Chapters 14 and 342. Chapters 14 and 342 take precedence in these situations, and a student's needs may be met using the procedures therein.

*§ 16.21 (relating to general).* Similar to §§ 14.21 and 342.21, this section requires each school district to have a system for locating and identifying students who are thought to be gifted and in need of specially designed instruction. The system includes public awareness activities as part of the screening and evaluation process. However, the system is not explicitly prescribed as under §§ 14.22—14.24 and §§ 342.22—342.24 (relating to public awareness; comprehensive screening; and instructional supplies), so that districts have discretion to develop and implement these systems to meet their own unique needs.

*§ 16.22 (relating to gifted multidisciplinary evaluation).* Similar to §§ 14.25 and 342.25 (relating to multidisciplinary evaluation), this section provides procedures for conducting evaluations of students who are thought to be gifted. This section refers to an evaluation of a gifted student as a gifted multidisciplinary evaluation. To reduce the number of evaluations, parent requests for evaluation are limited to one request per school term.

*§ 16.41 (relating to general).* Similar to §§ 14.41, 14.42, 342.41 and 342.42, this section sets forth requirements regarding educational placement to ensure that educational placement is based on a gifted student's needs and that a student benefits from that educational placement. To increase local flexibility, this new chapter does not require placement by level of intervention and contains no class size restrictions.

Chapters 14 and 342 are proposed to be amended by deleting gifted education provisions in §§ 14.1, 14.2, 14.24, 14.25, 14.38, 14.67, 342.1, 342.25, 342.38 and 342.42.

#### *Affected Parties*

Proposed Chapter 16 will benefit Commonwealth students who are, or thought to be, gifted; their parents; and school districts and other education agencies which must comply with the regulations.

#### *Cost and Paperwork Estimates*

The proposed amendments will impose no additional cost or revenue loss to the Commonwealth. The proposed amendments will not require any additional reports or paperwork requirements. None of the regulatory requirements in the proposed chapter are new for school districts, and, in fact, a number of regulatory requirements have been removed or reduced as noted previously. For example, routine reevaluations of the approximately 85,000 identified gifted students currently required every 2 years, cost an average of \$250 per student. Eliminating the requirements for reevaluation every 2 years, assuming that reevaluations are requested for 20% of gifted students, could reduce costs to school districts by approximately \$16.8 million over 3 years. Moreover, considerable staff time could be redirected to teaching and other services for students.

#### *Effective Date*

These proposed amendments will become effective upon final publication in the *Pennsylvania Bulletin*.

#### *Sunset Date*

The effectiveness of proposed Chapter 16 will be reviewed by the Board every 4 years in accordance with the Board's policy and practice respecting all regulations promulgated by the Board. Thus, no sunset date is necessary.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 23, 1998, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(d) of the Regulatory Review Act, if the Committees have objections to any portion of the proposed amendments, they will notify the Board within 20 days of the close of the public comment period. Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Board, the General Assembly and the Governor of objections raised.

#### *Public Comments and Contact Person.*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Peter H. Garland, Executive Director of the State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Dr. Garland at (717) 787-3787 or TDD (717) 787-7367.

Alternative formats of the proposed amendments (such as braille, large print, a cassette tape) can be made available to members of the public upon request to Dr. Garland at the telephone and TDD numbers listed previously.

PETER H. GARLAND,  
*Executive Director*

**Fiscal Note:** 6-266. No fiscal impact; (8) recommends adoption. This proposed rulemaking will result in a significant savings to school districts.

#### **Annex A**

#### **TITLE 22. EDUCATION**

#### **PART I. STATE BOARD OF EDUCATION**

#### **Subpart A. MISCELLANEOUS PROVISIONS**

#### **CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS**

#### **GENERAL PROVISIONS**

#### **§ 14.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Exceptional student*—[ **A student who meets one of the following criteria:**

(i) ] An eligible student.

[ (ii) A student other than an eligible young child who is gifted as set forth in Chapter 342.

(iii) A student receiving special education and related services as a gifted and talented school-aged person under Chapter 13 prior to July 1, 1990.

(iv) A school age child in a detention home. ]

\* \* \* \* \*

#### § 14.2. Purpose.

\* \* \* \* \*

(d) To provide services and programs efficiently, the Commonwealth will delegate operational responsibility to its school districts. Each school district shall, by direct service or through arrangement with other agencies, provide the following:

\* \* \* \* \*

[ (8) An education for gifted students which enables them to participate in acceleration or enrichment programs, or both, as appropriate, and to receive services according to their intellectual and academic abilities. ]

\* \* \* \* \*

### SCREENING AND EVALUATION PROCESS

#### § 14.24. Instructional support.

(a) This section does not apply to students [ **who are thought to be gifted, to students** ] beyond the sixth grade who are thought to be eligible, to students attending nonpublic schools who are thought to be exceptional or to young children not yet of kindergarten age or not enrolled in a public school program.

\* \* \* \* \*

#### § 14.25. Multidisciplinary evaluation.

\* \* \* \* \*

(c) A multidisciplinary evaluation shall be initiated if one of the following applies:

\* \* \* \* \*

(5) The student is [ **thought to be gifted, the student is** ] beyond the sixth grade and thought to be eligible, the student attends a nonpublic school and is thought to be exceptional or the young child thought to be eligible is not yet of kindergarten age or not enrolled in a public school program.

### IEP

#### § 14.38. Planned courses.

Planned courses for exceptional students shall be conducted under Chapter 5 (relating to curriculum), this chapter and Chapter 342 (relating to special education services and programs). Planned courses shall include provisions for:

\* \* \* \* \*

[ (5) Development of curricula for gifted students which include acceleration, enrichment, or both, as appropriate. ]

### PROCEDURAL SAFEGUARDS

#### § 14.67. Independent educational evaluation.

(a) The parents of an eligible student or eligible young child or student or young child thought to be eligible have the right to obtain an independent educational evaluation

of the student or young child, subject to subsections (b)—(f). [ **The parents of students who are gifted or thought to be gifted have the right to obtain an independent educational evaluation of the student subject to subsections (b)—(e).** ]

\* \* \* \* \*

(*Editor's Note:* Chapter 16 is proposed to be added. It is printed in regular type to enhance readability.)

## CHAPTER 16. GIFTED EDUCATION

### GENERAL PROVISIONS

#### Section

- 16.1. Definitions.
- 16.2. Purpose.
- 16.3. Experimental programs.
- 16.4. Strategic plans.
- 16.5. Personnel.
- 16.6. General supervision.
- 16.7. Special education.

### SCREENING AND EVALUATION

- 16.21. General.
- 16.22. Gifted multidisciplinary evaluation.
- 16.23. Gifted multidisciplinary reevaluation.

### GIEP

- 16.31. General.
- 16.32. GIEP.
- 16.33. Support services.

### EDUCATIONAL PLACEMENT

- 16.41. General.
- 16.42. Parental placement in private schools.

### PROCEDURAL SAFEGUARDS

- 16.61. Notice.
- 16.62. Consent.
- 16.63. Impartial due process hearing.
- 16.64. Mediation.
- 16.65. Confidentiality.

### IMPLEMENTATION SCHEDULE

- 16.71. General.

### GENERAL PROVISIONS

#### § 16.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Agency*—An intermediate unit, school district, area vocational technical school, State-operated program or facility, or other public or private organization providing educational services to gifted students or students thought to be gifted.

*Chapter 5*—The State Board of Education regulations as adopted under statutory authority in the School Code.

*Educational placement*—The overall educational environment in which gifted education is provided to a gifted student.

*GIEP*—Gifted Individualized Education Program.

*GMDT*—Gifted Multidisciplinary Team.

*Gifted education*—Specially designed instruction to meet the needs of a gifted student that is:

- (i) Conducted in the classroom or in other settings.
- (ii) Provided in an instructional or skill area.
- (iii) Provided at no cost to the parents.
- (iv) Provided under the authority of a school district, directly, by referral or by contract.
- (v) Provided by an agency.



(vi) Individualized to meet the educational needs of the student.

(vii) Reasonably calculated to yield meaningful educational benefit and student progress.

(viii) Provided in conformity with a GIEP.

*Gifted Multidisciplinary Evaluation*—A systematic process of testing, assessment and other evaluative processes used by a team to develop a recommendation about whether or not a student is gifted or needs gifted education.

*Gifted student*—A student who is exceptional under section 1371 of the School Code (24 P.S. § 13-1371) because the student meets the definition of mentally gifted in this section, and needs specially designed instruction beyond that required in Chapter 5 (relating to curriculum). The term applies only to students who are of "school age" as defined under § 11.12 (relating to school age).

*Instructional setting*—A classroom or other setting in which gifted students are receiving gifted education.

*Mentally gifted*—Outstanding intellectual and creative ability the development of which requires specially designed programs or support services, or both, not ordinarily provided in the regular education program. This term includes a person who has an IQ of 130 or higher and when multiple criteria defined by the Department indicate gifted ability. Determination of gifted ability will not be based on IQ score alone. A person with an IQ score lower than 130 may be admitted to gifted programs when other educational criteria in the profile of the person strongly indicate gifted ability. Determination of mentally gifted shall include an assessment by a certified school psychologist.

*Parents*—A natural or adoptive parent or parents, a guardian or guardians, one or more persons acting as the parent or parents of a student.

*Party*—A parent or school district.

*Regular classroom*—A specific instructional grouping within the regular education environment.

*Regular education environment*—The regular classroom and other instructional settings in which students without a need for gifted education receive instructional programs and the full range of supportive services normally provided to these children. Within the regular education environment, regular and gifted education shall be provided to a gifted student when deemed appropriate by the student's GIEP.

*School Code*—The Public School Code of 1949 (24 P.S. §§ 1-101—27-2702).

*School day*—A day in which school is in session.

*Screening and evaluation process*—The systematic determination of whether or not a student is gifted or needs gifted education.

*Social work services in school*—Preparing a social or developmental history of a child who is gifted, group and individual counseling with the child and family, working with problems in a child's living situation (home, school and community) that affect the child's adjustment in school, and mobilizing school and community resources to enable the child to learn effectively.

*Specially designed instruction*—Adaptations or modifications to the general curriculum, instruction, instructional environments, methods, materials or a specialized curriculum for students who are gifted. These adaptations

or modifications must go beyond the services and programs that the student would receive as part of a general education and be unique to the educational needs of each student.

*Support services*—Services required under § 16.33 (relating to support services) to assist a gifted student to benefit from gifted education. Examples of the term include:

(i) Psychological services.

(ii) Social work services.

(iii) Parent counseling and education.

(iv) Counseling services.

(v) Transportation to and from gifted programs to classrooms in buildings operated by the school district.

## **§ 16.2. Purpose.**

(a) This chapter specifies how the Commonwealth will meet its obligations to suspected and identified gifted students who require gifted education to reach their potential. It is the intent of the Board that gifted students be provided with quality gifted education services and programs. Achieving this purpose will require mutual efforts by the Commonwealth, school districts, other agencies and parents.

(b) The Board acknowledges that students who are gifted and therefore need specially designed instruction are considered to be children with exceptionalities under section 1371 of the School Code (24 P.S. § 13-1371(1)). The creation of this chapter and the separation of gifted education from Chapters 14 and 342 is not intended to circumvent the statutory protections afforded to gifted students by the School Code, nor is it the Board's intent to create a need to relitigate case law already established in this Commonwealth pertaining to gifted students. It is the Board's intent to draw a clear distinction between gifted education as required in the Commonwealth and special education as required by Federal law. To accomplish this, the Board has removed or changed references to terms and concepts which are clearly linked to special education as prescribed under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—1485). This chapter is intended to strike a proper balance between necessary regulatory protections and maximum local control.

(c) The Commonwealth, through the Department, will provide general supervision of services and programs provided under this chapter.

(d) The Department will disseminate information about and promote the use of promising practices and innovative programs to meet the needs of gifted students.

(e) To provide services and programs efficiently, the Commonwealth will delegate operational responsibility to its school districts. Each school district shall, by direct service or through arrangement with other agencies, provide the following:

(1) Services and programs planned, developed and operated for the identification and evaluation of each gifted student.

(2) Gifted education for each gifted student which is based on the unique needs of the student, not solely on the student's classification.

(3) Gifted education for gifted students which enables them to participate in acceleration or enrichment pro-

grams, or both, as appropriate, and to receive services according to their intellectual and academic abilities and needs.

### **§ 16.3. Experimental programs.**

(a) The Secretary may approve exceptions to this chapter for the operation of experimental programs that are anticipated to improve student achievement and that meet certain unique programmatic needs of gifted students. School entities shall submit an annual application for approval of those programs. The application shall:

(1) Include provision for the involvement of parents, administrators and professionals in the design and ongoing review of performance.

(2) Include provisions for annually evaluating the program as to whether it benefits student achievement.

(3) Demonstrate that it has met other criteria established by the Secretary.

(b) When an experimental program has been approved for 3-consecutive years and has resulted in improved student achievement under subsection (a), annual application is not needed for the program to continue to operate.

(c) The Secretary may terminate an experimental program for failing to meet the objectives established in the application or for noncompliance with State law or regulations not specifically waived in the Secretary's approval of the experimental program under subsection (a).

(d) The Secretary will report annually to the Board regarding applications for experimental programs under this section and the disposition of the applications.

### **§ 16.4. Strategic plans.**

(a) Each school district's strategic plan developed under Chapter 5 (relating to curriculum) shall include procedures for the education of all gifted students who are residents of the district under section 1302 of the School Code (24 P. S. § 13-1302). The strategic plan shall be developed to ensure the support of the implementation of plans developed under subsection (b).

(b) Each agency shall provide, as the Department may require, reports of students, personnel and program elements, including the costs of the elements, which are relevant to the delivery of gifted education.

### **§ 16.5. Personnel.**

(a) Professional personnel shall consist of certified individuals responsible for identifying gifted students and providing gifted education in accordance with Article XI of the School Code (24 P. S. §§ 11-1101—11-1192) and this title.

(b) Paraprofessional personnel consist of individuals who work under the direction of professional personnel as defined in this chapter. The duties and training of the paraprofessional staff shall be determined by the employing agency.

(c) A school district and intermediate unit shall provide, under section 1205.1 of the School Code (24 P. S. § 12-1205.1), in-service training for gifted and regular teachers, principals, administrators and support staff persons responsible for gifted education.

### **§ 16.6. General supervision.**

(a) Educational programs for gifted students administered within this Commonwealth are considered to be under the general supervision of the Department and shall meet the provisions of this chapter.

(b) The Department will ensure that appropriate and responsible fiscal oversight and control is maintained over the development and provision of gifted education in accordance with this chapter providing for fiscal accountability and prudent management.

(c) The Board will review this chapter at least every 4 years to ensure consistent interpretation and application of this chapter.

### **§ 16.7. Special education.**

(a) Nothing in this chapter is intended to reduce the protections afforded to students who are eligible for special education as provided for under Chapters 14 and 342 (relating to special education services and programs; and special education services) and the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—1485).

(b) If a student is determined to be both gifted and eligible for special education, the procedures in Chapter 14 and 342 take precedence.

(c) For students who are gifted and eligible for special education, it is not necessary for school districts to conduct separate screening and evaluations, develop separate IEPs or use separate procedural safeguards processes to provide for a student's needs as both a gifted and an eligible student.

## **SCREENING AND EVALUATION PROCESS**

### **§ 16.21. General.**

(a) Each school district shall adopt and use a system to locate and identify all students residing within the district's jurisdiction who are thought to be gifted and in need of specially designed instruction.

(b) Each school district shall conduct awareness activities to inform the public of gifted education services and programs and the manner by which to request these services and programs.

(c) Each school district shall determine the student's needs through a screening and evaluation process which meets the requirements of this chapter.

### **§ 16.22. Gifted multidisciplinary evaluation.**

(a) Prior to conducting an initial gifted multidisciplinary evaluation, the school district shall comply with the notice and consent requirements under §§ 16.61 and 16.62 (relating to notice; and consent).

(b) Referral for gifted multidisciplinary evaluation shall be made when the student is suspected of being gifted and not receiving an appropriate education under Chapter 5 (relating to curriculum) and one or more of the following apply:

(1) A request for evaluation has been made by the student's parents under subsection (c).

(2) The student is thought to be gifted because the school district's screening of the student indicates high potential consistent with the definition of mentally gifted or a performance level which exceeds that of other students in the regular classroom.

(3) A hearing officer or judicial decision orders a gifted multidisciplinary evaluation.

(c) Parents who suspect that their child is gifted may request a gifted multidisciplinary evaluation of their child at any time, with a limit of one request per school term. The request shall be in writing. If a parental request is made orally to school personnel, the personnel shall

inform the parents that the request shall be made in writing and shall provide the parents with a form for that purpose.

(d) Parental consent or, if consent is not obtained, the order of a hearing officer or court shall be obtained prior to the conduct of any part of an initial gifted multidisciplinary evaluation consistent with §§ 16.61—16.65 (relating to procedural safeguards).

(e) Multidisciplinary evaluations shall be conducted by GMDTs. The GMDT shall be formed on the basis of the student's needs and shall be comprised of the student's parents, a certified school psychologist, persons familiar with the student's educational experience and performance, one or more of the student's current teachers, persons trained in the appropriate evaluation techniques and, when possible, persons familiar with the student's cultural background. A single member of the GMDT may meet two or more of the qualifications specified in this subsection.

(f) Gifted multidisciplinary evaluations shall be sufficient in scope and depth to investigate information relevant to the student's suspected giftedness, including academic functioning, learning strengths and educational needs.

(g) The multidisciplinary evaluation process shall include information from the parents or others who interact with the student on a regular basis, and may include information from the student if appropriate.

(h) The following protection-in-evaluation measures shall be considered when performing an evaluation of students suspected of being exceptional:

(1) No one test or type of test may be used as the sole criterion for determining that a student is or is not gifted.

(2) Intelligence tests yielding an IQ score may not be used as the only measure of aptitude for students of limited English proficiency, or for students of racial-, linguistic- or ethnic-minority background.

(3) Tests and similar evaluation materials used in the determination of giftedness shall be:

(i) Selected and administered in a manner that is free from racial and cultural bias and bias based on disability.

(ii) Selected and administered so that the test results accurately reflect the student's aptitude, achievement level or whatever other factor the test purports to measure.

(iii) Professionally validated for the specific purpose for which they are used.

(iv) Administered by certified professional employees or certified school psychologists under instructions provided by the producer of the tests and sound professional practice.

(v) Selected and administered to assess specific areas of educational need and ability and not merely a single general IQ.

(i) The GMDT shall prepare a written report which brings together the information and findings from the evaluation or reevaluation concerning the student's educational needs and strengths. The report shall make recommendations as to whether the student is gifted and in need of specially designed instruction, shall indicate the bases for those recommendations, and shall indicate the names and positions of the members of the GMDT.

(j) To recommend that a student who has been evaluated is a gifted student, the GMDT shall conclude that

the student needs specially designed education and meets the criteria for eligibility as defined in § 16.1 (relating to definitions).

(k) The following timeline applies to the completion of gifted multidisciplinary evaluations:

(1) Each district shall establish and implement procedures to complete a gifted multidisciplinary evaluation for a student referred for evaluation within 45 school days after receiving parental permission for an initial evaluation, after notifying the parents of a reevaluation or after receiving an order of a court or hearing officer to conduct a multidisciplinary evaluation.

(2) An evaluation report shall be completed within 10 school days after completion of the gifted multidisciplinary evaluation.

(3) Within 5 school days after its completion, a copy of the evaluation report shall be delivered to the parents of the student.

#### **§ 16.23. Gifted multidisciplinary reevaluation.**

(a) Gifted students shall be reevaluated before a change in educational placement is recommended for the student and when the conditions under § 16.22(b)(1) or (3) (relating to gifted multidisciplinary evaluations) are met. In addition, gifted students may be reevaluated at any time under a recommendation by the GIEP team.

(b) Reevaluations shall be developed in accordance with the requirements concerning evaluation in this chapter.

(c) Reevaluations shall include a review of the student's GIEP, a determination of which instructional activities have been successful, and recommendations for the revision of the GIEP.

### **GIEP**

#### **§ 16.31. General.**

(a) A GIEP is a written plan describing the education to be provided to a gifted student. The initial GIEP shall be based on and be responsive to the results of the evaluation and shall be developed and implemented in accordance with this chapter.

(b) If a gifted student moves from one school district in this Commonwealth to another, the new district shall implement the existing GIEP to the extent possible or shall provide the services and programs specified in an interim GIEP agreed to by the parents until a new GIEP is developed and implemented in accordance with this section and §§ 16.32 and 16.33 (relating to GIEP; and support services) and until the completion of due process proceedings under §§ 16.61—16.65 (relating to procedural safeguards).

(c) Every student receiving gifted education provided for in a GIEP developed prior to \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal) shall continue to receive the gifted education under that GIEP until the student's GIEP is revised.

(d) Every student receiving gifted education prior to \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal) shall continue to receive gifted education unless a GIEP team determines that the student no longer needs gifted education.

#### **§ 16.32. GIEP.**

(a) Each school district shall establish and implement procedures to appoint a GIEP team to review the recommendations of the GMDT and, if the GIEP team determines a student is gifted, to develop a GIEP for the

student. The GIEP shall be developed at the GIEP meeting and based on data and information presented at that meeting.

(b) The GIEP team, in accordance with the requirements of this chapter shall, based upon the evaluation report, develop an initial GIEP for a student it determines to be a gifted student, and arrive at a determination of educational placement. Revisions to GIEPs, changes in educational placement or continuation of educational placement for a student determined to be a gifted student shall be made by the GIEP team based upon a review of the student's GIEP and instructional activities which have been successful, as well as on information in the most recent evaluation.

(c) Each GIEP team shall include persons who meet the following qualifications:

(1) One or both of the student's parents.

(2) The student, if 16 years of age or older, or if younger and the parents choose to have the student participate.

(3) A representative of the district, who will serve as the chairperson of the GIEP team, who is knowledgeable about the availability of resources of the district, and who is authorized by the district to commit those resources.

(4) One or more of the student's current teachers.

(5) Other individuals at the discretion of either the parents or the district.

(d) The school district shall establish and implement procedures designed to ensure that the parents of the gifted student are offered the opportunity to be present at each GIEP team meeting. These procedures shall include the following: documented phone calls, letters and certified letters with return receipts. Agencies shall maintain documentation of their efforts to encourage parents to attend. By including them in the invitation, the following shall be considered reasonable efforts to ensure parent participation in the GIEP meeting:

(i) The purpose, time and location of the meeting.

(ii) The names of the persons expected to attend.

(iii) The educational rights available to protect the student and parent, in language which is clear and fully explains all rights.

(iv) That a determination will be made at the meeting as to whether or not the student is gifted.

(v) That if the student is determined to be gifted, a GIEP will be developed.

(vi) Notifying the parent and other persons who will be attending early enough to ensure that the parent will have an opportunity to attend.

(e) The GIEP of each gifted student shall be based on the GMDT's recommendations and shall contain the following:

(1) A statement of the student's present levels of educational performance.

(2) A statement of annual goals and short-term learning outcomes which are responsive to the learning needs identified in the evaluation report.

(3) A statement of the specially designed instruction and support services to be provided to the student.

(4) Projected dates for initiation and anticipated duration of gifted education.

(5) Appropriate objective criteria, assessment procedures and timelines for determining, on at least an annual basis, whether the goals and learning outcomes are being achieved.

(6) The names and positions of GIEP team participants and the date of the meeting.

(f) A copy of the GIEP shall be provided to the parents, along with a notice of parental rights under §§ 16.61—16.65 (relating to procedural safeguards).

(g) The following timeline governs the preparation and implementation of GIEPs:

(1) A GIEP shall be developed within 30 calendar days after issuance of a GMDT's written report.

(2) The GIEP of each student shall be implemented in accordance with § 16.62(5) (relating to consent).

(3) GIEP team meetings shall be convened at least annually, or more frequently if conditions warrant, as well as following an evaluation or reevaluation. A GIEP team meeting shall also be convened at the request of a GIEP team member, the parent, the student or the school district.

### **§ 16.33. Support services.**

(a) The GIEP team, during the development, review or revision of a GIEP, shall determine whether the gifted student needs one or more support services.

(b) The GIEP team shall conclude that transportation to and from school or to and from a site other than the school, psychological services, social work services, parent counseling and education, or another service is a support service if the GIEP determines that one of the following criteria has been met:

(1) The service is an integral part of an educational objective of the student's GIEP, without which the GIEP cannot be implemented.

(2) The service is needed to ensure the student benefits from or gains access to a gifted education program.

## **EDUCATIONAL PLACEMENT**

### **§ 16.41. General.**

(a) The GIEP team shall base educational placement decisions on the gifted student's needs.

(b) Districts may use administrative and instructional strategies and techniques in the provision of gifted education for gifted students which do not require, but which may include, categorical grouping of students. The placement shall:

(1) Enable the provision of appropriate specially designed instruction based on the student's need and ability.

(2) Ensure that the student is able to benefit from the rate, level and manner of instruction.

(3) Provide opportunities to participate in acceleration or enrichment, or both, as appropriate for the student's needs.

(c) Districts shall adopt board policies relating to caseloads and class sizes for gifted students which:

(1) Ensure the ability of assigned staff to provide the services required in each gifted student's GIEP.

(2) Address all the educational placements for gifted students used by the district.

(3) Limit the total number of gifted students which can be on an individual gifted teacher's caseload to a maximum of 75 students.

(d) Gifted educational placement may not be based on one or more of the following:

- (1) Lack of availability of placement alternatives.
- (2) Lack of availability or efforts to make educational or support services available.
- (3) Lack of staff qualified to provide the services set forth in the GIEP.
- (4) Lack of availability of space or of a specific facility.

#### **§ 16.42. Parental placement in private schools.**

(a) This chapter does not limit the right of parents to have their gifted children educated at private schools completely at private expense.

(b) The home education program of a gifted child shall be governed by sections 1327 and 1327.1 of the School Code (24 P. S. §§ 13-1327 and 13-1327.1).

### **PROCEDURAL SAFEGUARDS**

#### **§ 16.61. Notice.**

(a) A school district shall document the provision of written notice to the parents of a gifted student at least 10 school days prior to one or more of the following events:

(1) The school district proposes to conduct a gifted multidisciplinary evaluation or reevaluation of the student.

(2) The school district proposes or refuses to initiate or change the identification, evaluation or educational placement of the student, or proposes or refuses to make significant changes in the GIEP.

(b) A change in the identification, evaluation, educational placement or GIEP of a gifted student may not be made during the pendency of an administrative or judicial proceeding unless agreed to by the parties to the proceeding.

(c) The content of notices to the parents shall be written in language understandable to the general public. If necessary, the content of notices shall be communicated orally in the native language or directly so that the parents understand the content of the notices.

(d) The notice shall include:

(1) A description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action and a description of options the district considered and the reasons why those options were rejected.

(2) A description of each evaluation procedure, type of test, record or report used as a basis for the action.

(3) A description of other factors relevant to the district's action.

(4) A full explanation of the procedural safeguards, including the right to an impartial hearing available to the student or the parents under this chapter.

(e) The notice shall inform the parents of the following:

(1) The addresses and telephone numbers of various organizations which are available to assist in connection with the hearing.

(2) The timelines involved in conducting an evaluation, developing a GIEP, and initiating a hearing.

(3) An outside evaluation submitted by the parents shall be considered.

(4) The information in § 16.63 (relating to impartial due process hearing).

#### **§ 16.62. Consent.**

The district shall document that written parental consent is obtained prior to:

(1) Conducting an initial multidisciplinary evaluation.

(2) Initially placing a gifted student in a gifted program.

(3) Disclosing to unauthorized persons information identifiable to a gifted student.

(4) When completed, the GIEP provided for in § 16.32 (relating to GIEP) shall be presented to the parents, along with a notice of recommended assignment signed by the school district superintendent provided for in § 16.61 (relating to notice) and a notice of parental right to an impartial due process hearing under § 16.63 (relating to impartial due process hearing). The notice shall be presented to the parents in person at the conclusion of the GIEP conference or by certified mail within 5 calendar days after the completion of the GIEP conference.

(5) The parents shall have 10 calendar days to respond to a notice of recommended assignment sent by mail or 5 calendar days to respond to a notice presented in person at the conclusion of a GIEP conference. If the parents receive the notice in person and approve the recommended assignment within 5-calendar days, the school district may not implement the GIEP for at least 5-calendar days, to give the parents an opportunity to notify the district within the 5-day period of a decision not to approve the recommended assignment.

#### **§ 16.63. Impartial due process hearing.**

(a) Parents may request an impartial due process hearing concerning the identification, evaluation or educational placement of, or the provision of a gifted education to, a student who is gifted or who is thought to be gifted if the parents disagree with the school district's identification, evaluation or placement of, or the provision of a gifted education to the student.

(b) A school district may request a hearing to proceed with an initial evaluation or an initial educational placement when the district has not been able to obtain consent from the parents or in regard to a matter under subsection (a).

(c) The hearing shall be conducted by and held in the local school district at a place reasonably convenient to the parents. At the request of the parents, the hearing may be held in the evening. These options shall be set forth in the form provided for requesting a hearing.

(d) The hearing shall be an oral, personal hearing and shall be open to the public unless the parents request a closed hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student and may not be available to the public.

(e) The decision of the hearing officer shall include findings of fact, a discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision shall be based solely upon the substantial evidence presented at the hearing.

(f) The hearing officer shall have the authority to order that additional evidence be presented.

(g) A written transcript of the hearing shall, upon request, be made and provided to parents at no cost.

(h) Parents may be represented by any person, including legal counsel.

(i) A parent or a parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.

(j) A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least 5 days before the hearing.

(k) A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based.

(l) A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

(m) The decision of the impartial hearing officer may be appealed to a panel of three appellate hearing officers. The panel's decision may be appealed further to a court of competent jurisdiction. In notifying the parties of its decision, the panel shall indicate the courts to which an appeal may be taken.

(n) The following applies to coordination services for hearings and to hearing officers:

(1) The Secretary may contract for coordination services in support of hearings conducted by local school districts. The coordination services shall be provided on behalf of school districts and may include arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.

(2) If a school district chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if its procedures similarly provide for procedural consistency and ensure the rights of the parties. In the absence of its own procedures, a school district which receives a request for an impartial due process hearing shall forward the request to the agency providing coordination services under paragraph (1) without delay.

(3) A hearing officer may not be an employee or agent of a school district in which the parents or student resides, or of an agency which is responsible for the education or care of the student. A hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

(o) The following timeline applies to due process hearings:

(1) A hearing shall be held within 30-calendar days after a parent's or school district's initial request for a hearing.

(2) The hearing officer's decision shall be issued within 45-calendar days after the parent's or school district's request for a hearing.

(p) Each school district shall keep a list of the persons who serve as hearing officers. The list shall include the qualifications of each hearing officer. School districts shall provide parents with information as to the availability of the list and shall make copies of it available upon request.

#### **§ 16.64. Mediation.**

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Joint session*—A stage of the mediation conference when the mediator meets with the parties and participants together and each party is given an uninterrupted opportunity to present the issues and concerns. The mediator shall help the parties to arrive at a satisfactory resolution to the conflict by encouraging parties to explore the possible solutions.

*Mediation*—A process whereby parents and agencies involved in a gifted education dispute may obtain the assistance of an impartial mediator in an attempt to reach a mutually agreeable settlement of issues in dispute.

*Mediation agreement*—A written record of agreement reached by the parties.

*Mediation conference*—A structured, but informal meeting of the parties and participants with a mediator. The purpose of the conference is to develop a mutually acceptable, written agreement that is binding on the parties.

*Mediator*—An impartial, neutral person who helps parties involved in a conflict to develop their own solutions to the dispute. The term does not include a person who makes decisions about the conflict for the parties.

*Participants*—Other persons appearing at the mediation conference on behalf of either party, such as other family members and specialists.

*Parties*—The parents and designated agency personnel involved in the conflict. Each party shall come to the mediation conference with the authority to commit resources to the resolution agreed upon by the parties.

*Private session (caucus)*—A private meeting between the mediator and only one of the parties to further clarify that party's position and to explore possible solutions to the conflict. The mediator may not share information from the private session without consent of the party.

(b) If a dispute is resolved through mediation, a written agreement shall be prepared and placed in the child's education record. The agreement shall also be incorporated into the GIEP, if appropriate.

(c) During a mediation conference the mediator shall meet with the parties together in a joint session and individually in private sessions.

(d) Discussions occurring during the mediation session shall be confidential, and no part of the mediation conference shall be recorded.

(e) The mediator may not be called as a witness in future proceedings.

(f) The designated agency involved in the dispute shall send a representative who has the authority to commit resources.

(g) The written mediation agreement is not a confidential document and shall be incorporated into the student's GIEP and is binding on the parties.

(h) The mediation agreement shall be enforceable by the Department.

(i) A GIEP team shall be convened, within 20 school days following the mediation agreement, to incorporate the mediation agreement into the GIEP.

(j) When the mediation conference results in a resolution of the dispute, each party shall receive an executed copy of the agreement at the conclusion of the mediation conference.

(k) Mediation may not be used to deny or delay a party's right to a due process hearing.

#### § 16.65. Confidentiality.

Each agency shall protect the confidentiality of personally identifiable information regarding a gifted student or a student thought to be gifted in accordance with section 13(a) of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.A. § 1232g), 34 CFR Part 99 (relating to family educational rights and privacy) and Chapter 12 (relating to students) and other applicable law.

#### IMPLEMENTATION

#### § 16.71. General.

(a) Students receiving gifted education under Chapters 14 and 342 (relating to special education; and special education services and programs) prior to \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal) are entitled to continue to receive gifted education under this chapter.

(b) School districts and agencies shall continue to implement gifted education for students described in subsection (a) until the students have graduated from high school or would no longer be eligible under this chapter.

(c) The Department will assure that this section is implemented.

#### PART XVI. STANDARDS

#### CHAPTER 342. SPECIAL EDUCATION SERVICES AND PROGRAMS

#### § 342.1. Definitions.

\* \* \* \*

(b) *Additional definitions.* The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \*

**[ *Mentally gifted*—Outstanding intellectual and creative ability the development of which requires special services and programs not ordinarily provided in the regular education program. This term includes a person who has an IQ of 130 or higher and when multiple criteria as set forth in Department Guidelines indicate gifted ability. Determination of gifted ability will not be based on IQ score alone. A person with an IQ score lower than 130 may be admitted to gifted programs when other educational criteria in the profile of the person strongly indicate gifted ability. Determination of mentally gifted shall include a full assessment and comprehensive report by a public school psychologist specifying the nature and degree of the ability. ]**

**[ (c) *Eligible young child.* The classification of eligible young child includes all of the classifications listed in this section except mentally gifted. ]**

**[ (d) ] (c) \* \* \***

#### SCREENING AND EVALUATION PROCESS

#### § 342.25. Multidisciplinary evaluation.

(a) Referral for multidisciplinary evaluation shall be made when special education referral criteria have been

met and are in accordance with § 14.25 (relating to multidisciplinary evaluation). Referral for multidisciplinary evaluation is indicated when the student is suspected of being exceptional and one or more of the following exist:

**[ (1) The instructional assessment of the student indicates high potential consistent with the definition of mentally gifted or a performance level which exceeds that of other students in the regular classroom. ]**

**(2) ] (1) \* \* \***

**[ (3) ] (2) \* \* \***

\* \* \* \*

#### IEP

#### § 342.38. Planned courses.

(a) Curricula for exceptional students shall be designed to:

\* \* \* \*

**[ (5) Provide higher level thinking skills and advanced content acceleration and enrichment for the gifted. ]**

\* \* \* \*

#### EDUCATIONAL PLACEMENT

#### § 342.42. Educational placement.

\* \* \* \*

(h) School districts may establish classes for exceptional students in the following categories:

(1) **[ *Academic support.* ]**

**[ (i) *Gifted support class.* A class for exceptional students identified as mentally gifted. ]**

**(ii) ] *Learning support class.* A class for exceptional students whose primary identified need is academic learning.**

\* \* \* \*

(j) Class sizes and class loads for assignments for special education services and programs shall conform to the following table:

#### Caseload and Class Size for Special Education

This chart presents the caseload allowed on a single teacher's rolls; the number in parenthesis is the maximum number of exceptional students in the room with the teacher at one time.

*Type of Service    Itinerant    Resource    Part-time    Full-time*  
*Academic Support Class:*

<b>[ Gifted Support</b>	<b>15-75(15)</b>	<b>12-50(15)</b>	<b>10-30(15)</b>	<b>10-15(15) ]</b>
	*	*	*	*

[Pa.B. Doc. No. 98-1603. Filed for public inspection October 2, 1998, 9:00 a.m.]

# STATEMENTS OF POLICY

## Title 4—ADMINISTRATION

### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 9]

#### Reorganization of the Department of Labor and Industry

The Executive Board approved a reorganization of the Department of Labor and Industry effective September 16, 1998.

The organization chart at 28 Pa.B. 4950 (October 3, 1998) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

[Pa.B. Doc. No. 98-1604. Filed for public inspection October 2, 1998, 9:00 a.m.]

#### [4 PA. CODE CH. 9]

#### Reorganization of the Department of Transportation

The Executive Board approved a reorganization of the Department of Transportation effective September 16, 1998.

The organization chart at 28 Pa.B. 4951 (October 3, 1998) is published at the request of the Joint Committee

on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

[Pa.B. Doc. No. 98-1605. Filed for public inspection October 2, 1998, 9:00 a.m.]

#### [4 PA. CODE CH. 9]

#### Reorganization of the Securities Commission

The Executive Board approved a reorganization of the Securities Commission effective September 16, 1998.

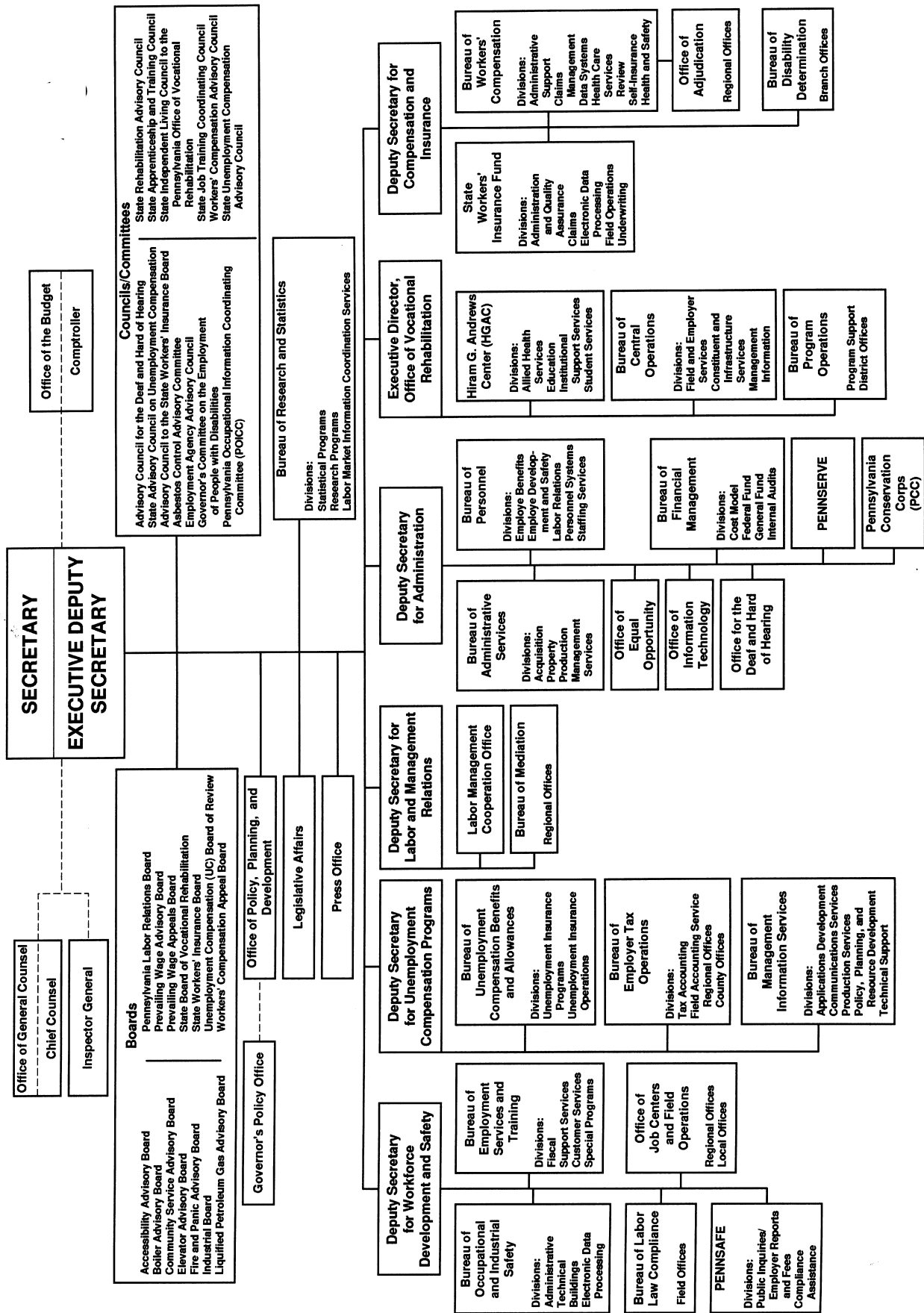
The organization chart at 28 Pa.B. 4952 (October 3, 1998) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

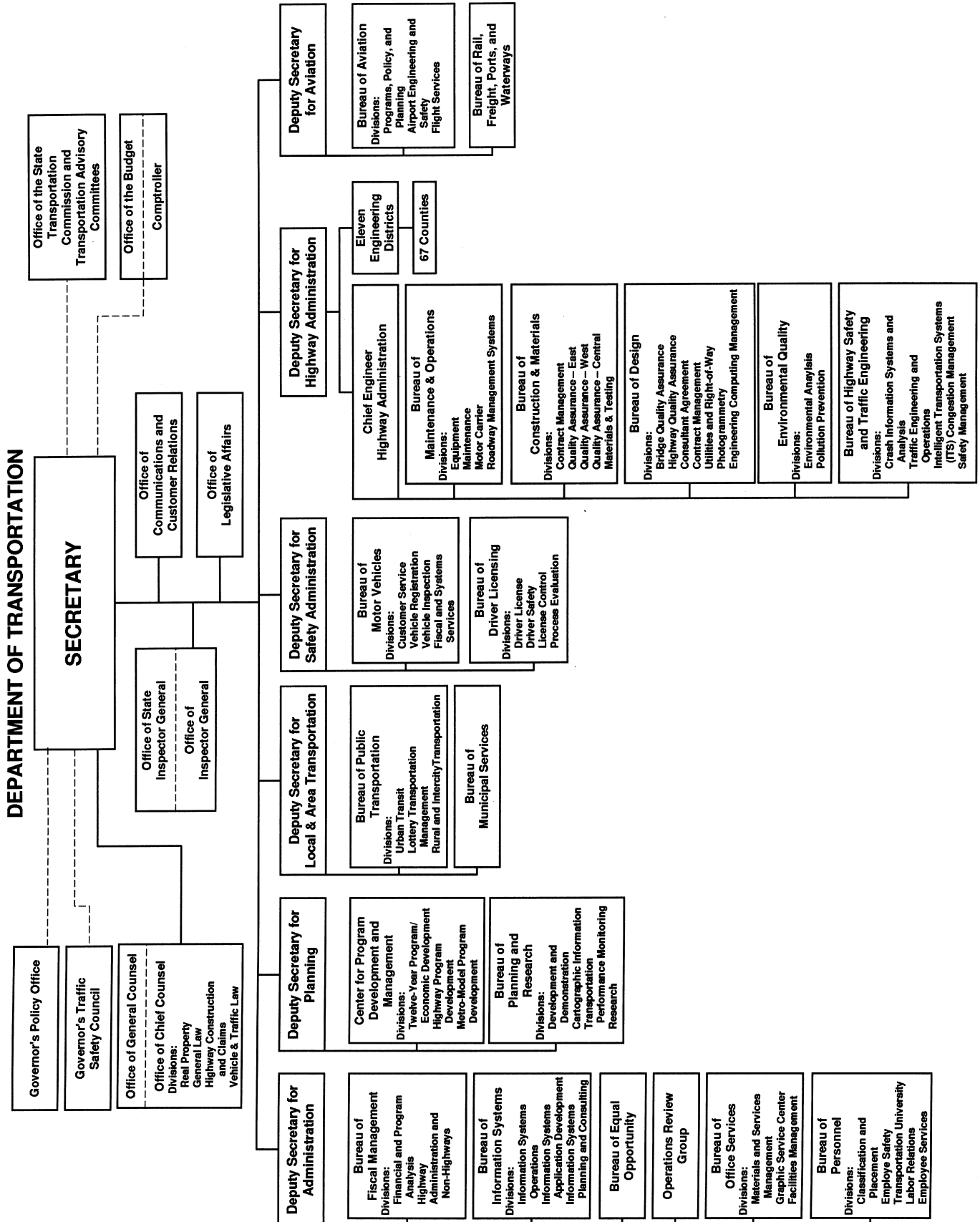
*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

[Pa.B. Doc. No. 98-1606. Filed for public inspection October 2, 1998, 9:00 a.m.]

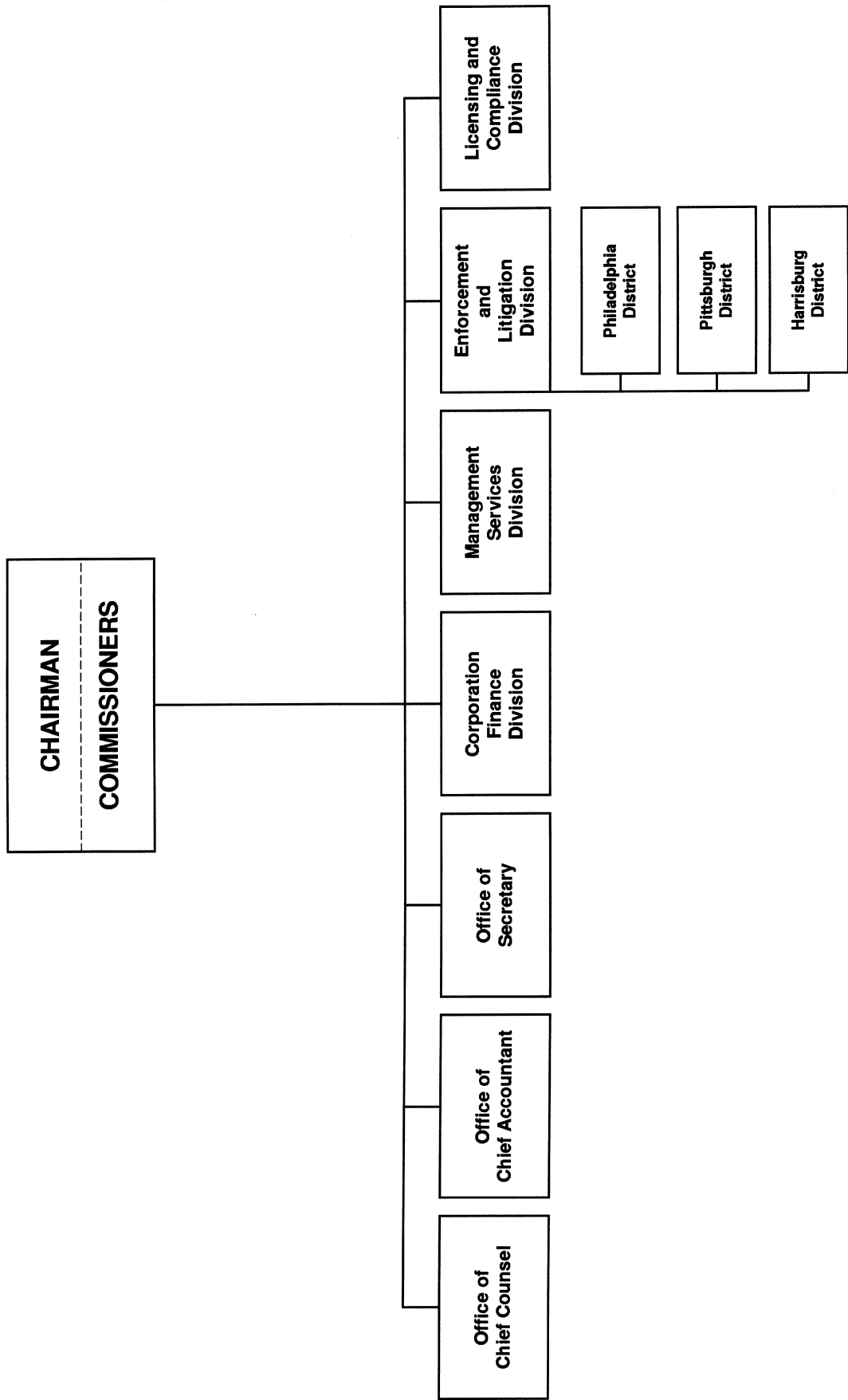


## DEPARTMENT OF LABOR AND INDUSTRY





SECURITIES COMMISSION



# NOTICES

## DELAWARE RIVER BASIN COMMISSION

### Commission Meeting and Public Hearing

The Delaware River Basin Commission (Commission) will hold a public hearing on Wednesday, October 7, 1998. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

In addition to the subjects listed which are scheduled for public hearing, the Commission will also address the following: Minutes of the September 9, 1998 business meeting; announcements; General Counsel's report; report on Basin hydrologic conditions; consideration of resolutions concerning Fiscal Year 1998 budget adjustments, reclassification of the Water Supply Storage Facilities Fund from a special revenue fund to an enterprise fund, amendment to the agreement between the Commission and the Delaware Department of Natural Resources and Environmental Control concerning Delaware Estuary water quality monitoring; and public dialogue.

The subjects of the hearing will be as follows:

*Applications for Approval of the Following Projects under Article 10.3, Article 11 and/or Section 3.8 of the Compact:*

1. *Conoco, Inc. D-97-38.* A project to improve and expand a portion of existing docking facilities on the tidal reach of the Delaware River at the Dupont Repauno Plant in Gibbstown, Greenwich Township, Gloucester County, NJ. The dock will continue to serve the adjacent Dupont and Conoco plant sites. The construction includes approximately 11 acres of dredging.

2. *Wernersville Municipal Authority D-98-10 CP.* An application for approval of a groundwater withdrawal project to supply up to 17.6 million gallons (mg)/30 days

of water to the applicant's distribution system from previously approved Well Nos. 3 through 8, existing Well No. 9, and from new Well No. 12, and to increase the existing withdrawal limit of 9 mg/30 days from all wells to 17.6 mg/30 days. The project is located in Wernersville Borough and South Heidelberg Township, Berks County, PA.

3. *J. G. Townsend, Jr. & Company D-98-37.* An application for approval of a groundwater withdrawal project to supply up to 16.84 mg/30 days of water to the applicant's agricultural irrigation system from new Well No. 9-Hercules, and to limit the withdrawal from all project wells to 16.84 mg/30 days. The project is located northwest of the City of Lewes, Sussex County, DE.

4. *Lucent Technologies, Inc. D-98-41.* An application for a Total Dissolved Solids (TDS) determination appropriate to both the applicant's current and anticipated discharge at its existing 3.6 million gallons per day industrial wastewater treatment plant (IWTP). The IWTP will continue to discharge to Spring Run, a tributary of the Lehigh River, in the City of Allentown, Lehigh County, PA. The allowable TDS concentration for the IWTP is needed in anticipation of the applicant's plan to reduce water usage and wastewater discharge and raise the TDS concentration. The IWTP will continue to serve only the applicant's electronic component and communication chips manufacturing plant.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883-9500, Ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883-9500, Ext. 203 prior to the hearing.

SUSAN M. WEISMAN,  
Secretary

[Pa.B. Doc. No. 98-1607. Filed for public inspection October 2, 1998, 9:00 a.m.]

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending September 22, 1998.

### BANKING INSTITUTIONS

#### Conversions

Date	Name of Bank	Location	Action
9-21-98	United States National Bank in Johnstown Johnstown Cambria		
	To:		
	U.S. Bank Johnstown Cambria County	Johnstown	Approved
	Application represents conversion from national charter to a State charter.		

**Branch Applications**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
9-16-98	Summit Bank Bethlehem Northampton County	Genuardi's Family Market 1758 Allentown Road Lansdale Montgomery County	Approved
9-16-98	Beneficial Mutual Savings Bank Philadelphia Philadelphia County	Five Points Plaza Shopping Center 640 Cowpath Road Montgomeryville Montgomery County	Approved
9-16-98	Suburban Community Bank Chalfont Bucks County	40 East Street Road Feasterville Lower Southampton Twp. Bucks County	Approved
9-18-98	Berks County Bank Reading Berks County	4001 Perkiomen Avenue Exeter Township Berks County	Filed
9-21-98	FirstService Bank Lansdale Montgomery County	1494 Old York Road Abington Montgomery County	Approved
9-21-98	Wilmington Trust of Pennsylvania West Chester Chester County	787 E. Lancaster Ave. Villanova Delaware County	Approved
9-21-98	Prime Bank Philadelphia Philadelphia County	7111 Valley Green Rd. Fort Washington Montgomery County	Authorization Rescinded
9-21-98	BankPhiladelphia Norristown Montgomery County	18 E. Wynnewood Ave. Wynnewood Montgomery County	Approved

**Branch Relocations**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
9-14-98	Laurel Bank Johnstown Cambria County	<i>To:</i> 200 Weldon Street Latrobe Westmoreland County  <i>From:</i> 1001 Ligonier Street Latrobe Westmoreland County	Effective
9-16-98	Abington Savings Bank Jenkintown Montgomery County	<i>To:</i> 990 Old York Road Abington Montgomery County  <i>From:</i> 1020 Old York Road Abington Montgomery County	Approved
9-17-98	Pennview Savings Bank Souderton Montgomery County	<i>To:</i> 503 Harleysville Pike Franconia Township Montgomery County  <i>From:</i> 500 Harleysville Pike Franconia Township Montgomery County	Approved
9-21-98	Firsttrust Savings Bank Flourtown Montgomery County	<i>To:</i> Pike Plaza Shopping Center Second Street Pike Southampton Bucks County  <i>From:</i> Hampton Square Shopping Center Second Street Pike Southampton Bucks County	Filed

**Articles of Amendment**

<i>Date</i>	<i>Name of Bank</i>	<i>Purpose</i>	<i>Action</i>
9-17-98	Mauch Chunk Trust Company Jim Thorpe Carbon County	To increase the authorized capital of the institution from \$350,000 divided into 350,000 shares of common stock at \$1.00 par value each; to \$1,500,000 divided into 1,500,000 shares of common stock at \$1.00 par value each.	Approved

**SAVINGS ASSOCIATIONS**

No activity.

**CREDIT UNIONS****Articles of Amendment**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Purpose</i>	<i>Action</i>
9-18-98	Utilities Employees Credit Union Sinking Spring Berks County	To amend Article 8, providing for a change in the field of membership.	Approved and Effective

RICHARD C. RISHEL,  
*Secretary*

[Pa.B. Doc. No. 98-1608. Filed for public inspection October 2, 1998, 9:00 a.m.]

## DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

**County Application for Homestead Exemption**

In accordance with section 8587 of the act of May 5, 1998 (P. L. 301, No. 50) (act), the Department of Community and Economic Development gives notice of the development of the County Application for Homestead Exemption for use by assessors under section 8584(A) of the act (relating to administration and procedure). The application and instructions for completion of the application follow as Annex A. The form will remain in effect until changed by a notice in the *Pennsylvania Bulletin*.

Further information can be obtained from the Department of Community and Economic Development, Room 439, Forum Building, Harrisburg, PA 17120, (717) 720-1361.

SAMUEL A. MCCULLOUGH,  
*Secretary*

**Annex A**

### County Application for Homestead Exemption

*Applications must be filed with the County Assessors Office by March 1st.  
Please read instructions before completing application. All information will be kept confidential.*

1. Parcel Number ( and/or Map Number if different) _____		
2. Property Address _____		
3. Municipality _____	School District _____	
4. Applicant Owner(s) _____		
5. Mailing Address of Applicant (if different than property address) _____		
6. Phone Number of Applicant:	Daytime _____	Evening _____
7. Do you use this property as your primary residence?	_____ Yes	_____ No
8. Do you claim anywhere else as your primary residence?	_____ Yes	_____ No
9. Is your residence part of a cooperative or a condominium where property taxes are paid jointly?	_____ Yes	_____ No
If yes, do you pay a portion of the taxes?	_____ Yes	_____ No

10. Is your property used for other purposes besides your primary residence, such as a business or rental property? \_\_\_\_\_ Yes \_\_\_\_\_ No
- If yes, what portion of the property is used for your primary residence? \_\_\_\_\_ %
- Do you wish to seek a farmstead exclusion for the buildings or structures on this property? \_\_\_\_\_ Yes \_\_\_\_\_ No
- If yes, is any, portion of the farm or buildings abated from property tax under another law or program? \_\_\_\_\_ Yes \_\_\_\_\_ No

Please read before signing: *Any person who knowingly files an application which is false to any material matter shall be subject to payment taxes due, plus interest, plus penalty and shall be subject to prosecution as a misdemeanor of the third degree and fine of up to \$2,500*

I hereby certify that all the above information is true and correct

Signature	Date
<b>OFFICIAL USE ONLY</b>	
Date Filed _____ Reviewed by _____ Date Reviewed _____ Applicable Years _____	<div style="text-align: right;"> <input type="checkbox"/> Accepted    <input type="checkbox"/> Rejected           </div> Homestead Value _____ Farmstead Value _____ Assessment Information: Land _____ Improvements _____ TOTAL _____

## INSTRUCTIONS

### APPLICATION FOR HOMESTEAD & FARMSTEAD EXCLUSIONS

Act 50 of 1998 permits counties, school districts and municipalities to make use of a homestead property tax exclusion as long as property tax millage rates are not increased to compensate for revenue lost from a homestead exclusion. Under a homestead property tax exclusion, the assessed value of each home is reduced by the same amount before the property tax is computed. Act 50 permits individuals to apply for a Homestead Exclusion, even though a Homestead Exclusion may not have been adopted by a local taxing body in which you reside.

1. Fill in the parcel number and the map number (if two different numbers) of the property for which you are seeking a homestead exclusion. You can find the parcel number and map number on your real property tax bill. If you do not have a real property tax bill, call your local tax collector or county assessment office (555-555-5555).
2. Fill in the address of the property for which you are seeking a homestead exclusion.
3. Fill in your municipality and school district. If you are not sure what your municipality or school district are, contact your local tax collector or county assessment office (555-555-5555).
4. Fill in your name and the name of other owners of record, such as your spouse or a co-owner of the property. You must be recorded owners to apply for the exclusion.
5. If your mailing address differs from the address of the property for which you are seeking a homestead exemption, fill in your mailing address.
6. Please list phone number where you can be reached during the day, and an the evening phone, if you are unavailable during the day.
7. Is this property your primary residence?  
 The Homestead Exclusion can only be claimed once on as a place of primary residence or domicile. "Domicile" is the fixed place of abode where the owner intends to reside permanently, not temporarily. "Domicile" is the place where a person makes their home, until something happens that the person adopts another home. You may be asked to provide proof that this property is your residence, such as your driver's license, your voter registration card, your personal income tax form or your local earned income tax form.
8. Do you have another residence which you claim as your primary residence? For instance, do you claim another state as your primary residence, or another county in Pennsylvania?
9. If you live in a unit of a cooperative or a condominium and you pay taxes jointly through a management agent or association, rather than paying your taxes separately from other units, check yes. If so, please provide the percentage of overall tax you pay. You may be asked to provide a contact to confirm this information.
10. Check yes if the property for which you are seeking a homestead exclusion is used for other purposes, such as a business or rental property. If so, please indicate what portion of the property is used as your private residence.

Check yes if you believe your property qualifies for the farmstead exclusion. If yes, please indicate what portion of the property is exempted, excluded or abated from real property taxation under any other law (e.g., Clean and Green or Act 515). You may be asked to provide proof that buildings and structures are used for commercial agricultural activity, such as the net income or loss schedule from your state or federal income tax forms.

Only buildings and structures on farms which are at least ten contiguous acres in area and used as the primary residence (domicile) of the owner are eligible for a farmstead exemption. The buildings and structures must be used for commercial agricultural production to store farm products produced on the farm, to house animals maintained on the farm, or to store agricultural supplies or machinery and equipment used on the farm.

#### **Change in Use**

When the use of a property approved as homestead or farmstead property changes so that the property no longer qualifies for the homestead or farmstead exclusion, property owners must notify the assessor within 45 days of the change in use. If the use of your property changes and you are not sure if it still qualifies for the homestead or farmstead exemption, you should contact the assessor.

#### **False or Fraudulent Applications**

The assessor may select, randomly or otherwise, applications to review for false or fraudulent information. Any person who files an application which contains false information, or who does not notify the assessor of a change in use which no longer qualifies as homestead or farmstead property, will be required to:

- Pay the taxes which would have been due but for the false application, plus interest.
- Pay a penalty equal 10% of the unpaid taxes.
- If convicted of filing a false application, be guilty of a misdemeanor of the third degree and be sentenced to pay a fine not exceeding \$2,500.

By signing and dating this form, the applicant is affirming or swearing that all information contained in the form is true and correct.

Applications must be filed before March 1 of each year. Please return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Questions on the Homestead Exclusion, please contact your local tax collector or the \_\_\_\_\_ County Assessment office at xxx-xxx-xxxx, office hours x:00 to x:00, Mon. through Fri. If your application has been denied, you will receive a written notice of the denial by June 30.

[Pa.B. Doc. No. 98-1609. Filed for public inspection October 2, 1998, 9:00 a.m.]

### **1999 Action Plan Summary**

The Department of Community and Economic Development (Department) proposes to adopt the Commonwealth's Action Plan for Federal Fiscal Year (FFY) 1999 and the Program Year that starts on January 1, 1999. The 1999 Action Plan is an update of the Commonwealth's Consolidated Plan for FFY 1995-1999. The Action Plan discussed herein is the fourth annual update of the Consolidated Plan submitted by the Commonwealth.

The 1999 Action Plan (Plan) updates documents previously submitted to the United States Department of Housing and Urban Development (HUD). These documents include the nonhousing community development plan and any changes that the Department may have implemented concerning the three programs administered by the Department. The programs administered by the Department are the Community Development Block Grant (CDBG), the Home Investment Partnerships (HOME) and the Emergency Shelter Grants (ESG) programs. The Department of Health administers the Housing Opportunities for Persons with AIDS (HOPWA) program.

This summary is designed to provide an opportunity to citizens, local governmental officials and interested organizations of the Commonwealth to comment about the Plan. Written comments should be submitted to Aldona

Kartorie, Office of Community Development and Housing, Department of Community and Economic Development, Room 509 Forum Building, Harrisburg, PA 17120. Written comments must be received by October 19, 1998, to be included as testimony or by November 4, 1998, for inclusion in the Action Plan.

The public hearing has been scheduled for October 20, 1998, at the Forum Building, Room 321, Walnut Street and Commonwealth Avenue, Harrisburg, PA 17120, 10 a.m. to 11 a.m.

- Note: The public meeting may be shortened if there is minimal response.

Persons who want to speak must call to schedule a time to give oral testimony at the hearing. The hearing will be shortened if there is no one to testify or if there is minimal response. Please contact Aldona Kartorie at (717) 720-7409 to schedule oral testimony no later than October 19, 1998.

Persons who have a disability and wish to attend the public meeting should contact Aldona Kartorie, Room 509 Forum Building, Harrisburg, PA 17120, (717) 720-7409, to discuss how the Department can accommodate their needs. Text telephone calls can be placed through the Pennsylvania Relay System at (800) 654-5984. Calls will be relayed to the Department's number listed above.



*Purpose*

The Commonwealth's 1999 Action Plan is the last update to the 5-year 1995-1999 Consolidated Plan. This Action Plan will describe how the programs will be administered in 1999. HUD must approve this Plan for the Commonwealth and organizations within the State to receive funding under most HUD housing and community development programs. Applicants for funding from Federal Housing programs must obtain certification that their proposed use of HUD assistance will be consistent with the applicable Plan for the area. The Consolidated Plan creates a unified strategy for housing and community development programs as well as the necessary linkages for building successful neighborhoods and communities.

The Plan will have a major impact on the types, location and number of affordable housing units generated and preserved in this Commonwealth as well as the infrastructure and public facilities, services and other economic and community development initiatives that Pennsylvania communities will undertake.

*Content*

There are no major changes discussed in the Plan.

*Public Review*

The Consolidated Plan is available for public comment now through November 4, 1998 at the following locations:

## 1. County Offices

## 2. Department Regional Offices:

Southeast Regional Office, 908 State Office Building, Broad and Spring Garden Streets, Philadelphia, PA 19130, (215) 560-2256.

Northeast Regional Office, 201 Samters Building, 101 Penn Avenue, Scranton, PA 18503, (717) 963-4571.

Northcentral and Southcentral Regional Offices, 576 Forum Building, Harrisburg, PA 17120, (717) 787-7247.

Southwest Regional Office, 413 State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222, (412) 565-5002.

Northwest Regional Office, Third Floor, Rothrock Building, 121 West 10th Street, Erie, PA 16501, (814) 871-4241.

## 3. Pennsylvania's 27 District Libraries:

B. F. Jones Memorial Library, Aliquippa

Allentown Public Library, Allentown

Centre County Library, Bellefonte

Bethlehem Area Public Library, Bethlehem

Conococheague District Library, Chambersburg

Clarion District Library, Clarion

Bucks County Free Library, Doylestown

Easton Area Public Library, Easton

Erie County Library, Erie

Dauphin County Library, Harrisburg

Cambria County Library, Johnstown

Lancaster County Library, Lancaster

Delaware County Library, Brookhaven

Monessen Public Library, Monessen

New Castle Public Library, New Castle

Montgomery County-Norristown Public Library, Norristown

Free Library of Philadelphia, Philadelphia

Carnegie Library of Pittsburgh, Pittsburgh

Pottsville Free Public Library, Pottsville

Reading Public Library, Reading

Scranton Public Library, Scranton

Warren Public Library, Warren

Citizen's Library, Washington

Chester County Library, Exton

Osterhout Free Library, Wilkes-Barre

James V. Brown Library, Williamsport

Martin Memorial Library, York

4. Audio Cassette copies of the Consolidated Plan can be obtained by contacting the Tri-County Branch of the Pennsylvania Association of the Blind: Patricia Summers, Coordinator, Harrisburg Area Radio reading Services, 1800 North Second Street, Harrisburg, PA 17102, (717) 238-2531.

The Plan will be made available again at these same locations following HUD approval.

SAMUEL A. MCCULLOUGH,

*Secretary*

[Pa.B. Doc. No. 98-1610. Filed for public inspection October 2, 1998, 9:00 a.m.]

## DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

### Ridley Creek Conservation Plan

The Department of Conservation and Natural Resources (DCNR), Bureau of Recreation and Conservation has approved the "Ridley Creek Conservation Plan" and is placing the Ridley Creek, the watershed and all tributaries covered in the Plan in Chester and Delaware Counties, on the Pennsylvania Rivers Conservation Registry (Registry).

On December 2, 1997, the Pennsylvania Environmental Council submitted the Ridley Creek Conservation Plan and other required information to gain Registry status.

After review of the Plan and other information, the DCNR has determined that PA Rivers Conservation Program requirements have been satisfied and places the following on the Registry:

1. The watershed area of Ridley Creek (Chester and Delaware Counties) from the headwaters in East Whiteland Township to its confluence with the Delaware River—37.9 square miles.

2. The following tributaries from the headwaters to their confluence with Ridley Creek:

- Hunters Run and unnamed tributaries
- Dismal Run and unnamed tributaries

- Spring Run and unnamed tributaries
- Vernon Run and unnamed tributaries

This action becomes effective October 3, 1998. Projects identified in the Ridley Creek Conservation Plan become eligible for implementation, development or acquisition grant funding through the PA Rivers Conservation Program.

A copy of the Final Plan is available for review at:

Pennsylvania Environmental Council, 1211 Chestnut Street, Suite 900, Philadelphia, PA 19107, (215) 563-0250 and

Department of Conservation and Natural Resources,  
Rachel Carson State Office Building, 400 Market Street,  
6th floor, Harrisburg, PA 17101, (717) 787-2316.

Maps and supporting data are on file at the Philadelphia Office of the Pennsylvania Environmental Council.

JOHN C. OLIVER,  
*Secretary*

[Pa.B. Doc. No. 98-1611. Filed for public inspection October 2, 1998, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Applications, Actions and Special Notices

#### APPLICATIONS

#### APPLICATIONS RECEIVED UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

##### [National Pollution Discharge Elimination System Program (NPDES)]

##### DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

##### (Part I Permits)

The following parties have applied for an NPDES permit to discharge controlled wastewaters into the surface waters of this Commonwealth. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain effluent limitations and special conditions. These proposed determinations are tentative.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted above the application within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant.

Following the 30-day comment period, the Water Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, proposed effluent limitations and special conditions, comments received and other information are on file and may be inspected and arrangements made for copying at the office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact Richard Adams at (717) 327-3666. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

#### Applications for National Pollutant Discharge Elimination System (NPDES) permit to discharge to State waters.

*Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**PA 0063835.** Industrial waste, **Burroughs Fuels, Inc.**, 1450 North 5th Street, Stroudsburg, PA 18360.

This proposed action is for issuance of an NPDES permit to discharge treated groundwater into Mud Run in Kidder Township, **Carbon County**.

The receiving stream is classified for the following uses: aquatic life, cold water fishery, high quality, water supply and recreation.

The proposed effluent limits for Outfall 001, based on a design flow of .00072 mgd are:

Parameter	Monthly Average (mg/l)	Daily Maximum (mg/l)	Instantaneous Maximum (mg/l)
Benzene	.001	.002	.0025
Total BTEX	.100	.200	.250

<i>Parameter</i>	<i>Monthly Average (mg/l)</i>	<i>Daily Maximum (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Toluene	monitor and report		
Ethylbenzene			
Xylene			
MTBE			

The EPA waiver is in effect.

*Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.*

**PA 0082457.** Industrial waste, SIC: 4941, **Alexandria Borough Water Authority**, P. O. Box 336, Alexandria, PA 16611.

This application is for renewal of an NPDES permit for an existing discharge of treated industrial waste to Robinson Run, in Porter Township, **Huntingdon County**.

The receiving stream is classified for warm water fishery, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was United Water Company located in Susquehanna Township, Dauphin County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.003 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	30	60	75
Total Aluminum	4	8	10
Total Iron	2	4	5
Total Manganese	1	2	2.5
pH		6—9	

Persons may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

**PA 0082791, Amendment No. 2.** Industrial waste, SIC: 4953, **Chester County Solid Waste Authority (Lancaster Landfill)**, 7224 Division Highway, Narvon, PA 17555.

This application is for amendment of an NPDES permit for an existing discharge of treated industrial waste to the Conestoga River, in Caernarvon Township, **Lancaster County**.

The receiving stream is classified for warm water fishery, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was the Lancaster Municipal Water Authority located in Lancaster City, Lancaster County. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.107 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH		6.0—9.0	
Total Suspended Solids	100.0	200.0	250.0
CBOD <sub>5</sub>	45.0	90.0	112.0
NH <sub>3</sub> -N			
(5-1 to 10-31)	14.0	28.0	35.0
(11-1 to 4-30)	42.0	84.0	105.0
Total Phosphorus	4.4	9.0	11.0
Total Residual Chlorine	0.9		1.8
Oil and Grease	15.0		30.0
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		4,000/100 ml as a geometric average	
Total Thallium	0.058	0.12	0.14
Total Aluminum	14.5	29.0	36.0
Total Iron	43.5	87.0	109.0
Dissolved Iron	8.7	17.4	21.8

The proposed effluent limits for Outfall 100 for a design flow of 0.087 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH		6.0—9.0	
Total Suspended Solids	100.0	200.0	250.0
CBOD <sub>5</sub>	100.0	200.0	250.0
NH <sub>3</sub> -N			
(5-1 to 10-31)	20.0	40.0	50.0
(11-1 to 4-30)	60.0	120.0	150.0
Total Copper	0.05	0.1	0.13
Total Thallium	0.1	0.2	0.25
Total Zinc	1.0	2.0	2.5
Total Aluminum	0.4	0.8	1.0
Total Iron	3.5		7.0
Naphthalene		monitor	
Heptachlor		monitor	
Total Residual Chlorine		monitor	

The proposed effluent limits for Outfall 101 for a design flow of 0.02 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH		monitor	
Total Iron		monitor	
Dissolved Iron		monitor	
Total Aluminum		monitor	
Oil and Grease		monitor	
NH <sub>3</sub> -N		monitor	

Persons may make an appointment to review the DEP files on this case by calling Mary DiSanto, File Review Coordinator, at (717) 705-4732.

The EPA waiver is in effect.

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*Northcentral Region: Environmental Program Manager, Water Management, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3666.*

**PA 0010596.** SIC: 2011, **Shamokin Township Realty, Inc.**, 1100 Flushing Avenue, Brooklyn, NY 11237.

This proposed action is for renewal of an NPDES permit for discharge of treated industrial waste to Bennys Run in Shamokin Township, **Northumberland County**.

The receiving stream is classified for the following uses: cold water fishery and aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the downstream potable water supply (PWS) considered during the evaluation is the Dauphin Consolidated Water Company located approximately 60 miles downstream.

The proposed effluent limits for Outfall 001, based on a design flow of 0.035 mgd, are:

<i>Specific Substance</i>	<i>Monthly Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
BOD <sub>5</sub>	42	84	105
TSS	60	120	150
NH <sub>3</sub> -N			
(5-1 to 10-31)	10	20	25
(11-1 to 4-30)	30	60	75
Oil and Grease	15	30	30
Chlorine Residual (T)	1.0		2.3
Fecal Coliforms		400/100 ml as a geometric mean	
pH		6.0—9.0 su at all times	

The EPA waiver is in effect.

**PA 0209716.** Sewerage, SIC: 4952, **Thomas G. Kitchen**, P. O. Box 183, Laporte, PA 18626.

This proposed action is for issuance of an NPDES permit for a new discharge of treated sewage wastewater to Unnamed Tributary of Mill Creek in Laporte Township, **Sullivan County**.

The receiving stream is classified for the following uses: cold water fishes, aquatic life, water supply and recreation. For the purposes of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply (PWS) considered during the evaluation is PA American Water Company located at Milton.

The proposed effluent limits for Outfall 001, based on a design flow of 0.0011 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	10		20
TSS	20		40
Total Cl <sub>2</sub> Residual	dechlorinate		0.05
Fecal Coliforms (5-1 to 9-30)		200 col/100 ml as a geometric mean	
(10-1 to 4-30)		200 col/100 ml as a geometric mean	
pH		6.0—9.0 at all times	

The EPA waiver is in effect.

**PA 0209724.** SIC: 4952, **H. H. Knoebel Sons, Inc. (Lake Glory Campground)**, R. R. 1, P. O. Box 317, Elysburg, PA 17824-0317.

This proposed action is for issuance of an NPDES permit for a new discharge of treated sewage to Roaring Creek in Cleveland Township, **Columbia County**.

The receiving stream is classified for the following uses: cold water fishery and aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing downstream potable water supply (PWS) considered during the evaluation is Sunbury Municipal Authority located 20.1 river miles downstream on the Susquehanna River.

The proposed effluent limits for Outfall 001, based on a design flow of 0.01 mgd, are:

<i>Parameter</i>	<i>Average Monthly</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25	50
Total Suspended Solids	30	60
Total Cl <sub>2</sub> Residual	2	4.6
Fecal Coliform (5-1 to 9-30)		200/100 ml as a geometric average
(10-1 to 4-30)		2,000/100 ml as a geometric average
pH	6.0—9.0 at all times	

*Other Conditions:* none.

The EPA waiver is in effect.

*Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**PA 0023892.** Sewage, **Masontown Municipal Authority**, Two Court Street, Masontown, PA 15461.

This application is for renewal of an NPDES permit to discharge treated sewage from the Bessemer Sewage Treatment Plant (Plant No. 1) in Masontown Borough, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Cats Run, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Masontown Borough WW located on the Monongahela River.

*Outfall 001:* existing discharge, design flow of 0.2 mgd.

<i>Parameter</i>	<i>Average Monthly</i>	<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum</i>
		<i>Average Weekly</i>	<i>Maximum Daily</i>	
CBOD <sub>5</sub>	25	37.5		50
Suspended Solids	30	45		60
Total Residual Chlorine (1st month—36th month)	monitor and report			
(37th month—expiration)	1.0			3.3
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA 0023906.** Sewage, **Masontown Municipal Authority**, Two Court Street, Masontown, PA 15461.

This application is for renewal of an NPDES permit to discharge treated sewage from the Masontown Municipal Authority Sewage Treatment Plant in Masontown Borough, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as an unnamed tributary of the Monongahela River, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Masontown Borough W.W. located on the Monongahela River.

*Outfall 001:* existing discharge, design flow of 0.4 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25	37.5		50
Suspended Solids	30	45		60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	60,000/100 ml as a geometric mean			
Total Residual Chlorine				
(1st month—36th month)	monitor and report			
(37th month—expiration)		1.0		3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA 0090981.** Sewage, **German Township**, R. D. 1, Box 287, McClellandtown, PA 15458.

This application is for renewal of an NPDES permit to discharge treated sewage from the Footedale STP in German Township, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as an unnamed tributary of Dunlap Creek, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Brownsville Water Company.

*Outfall 001:* existing discharge, design flow of .085 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25	38		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
(5-1 to 10-31)	5.5	8.3		11.0
(11-1 to 4-30)	16.5	24.8		33.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	6,000/100 ml as a geometric mean			
Total Residual Chlorine		1.3		3.1
pH	not less than 6.0 nor greater than 9.0			

*Other Conditions:* None.

The EPA waiver is in effect.

**PA 0096911.** Sewage, **R&M Manufacturing, Sales and Service, Inc.**, P. O. Box 750, Waynesburg, PA 15370.

This application is for renewal of an NPDES permit to discharge treated sewage from R&M Manufacturing Sales and Services, Inc. STP in Whiteley Township, **Greene County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Dyers Fork, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Masontown Borough Water Works.

*Outfall 001:* existing discharge, design flow of .0006 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine (1st month—36th month)	monitor and report			
(37th month—expiration)	1.4			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

*Northwest Regional Office: Regional Manager, Water Management, 230 Chestnut Street Meadville, PA 16335, (814) 332-6942.*

**PA 0032638.** Sewage. **Pleasant Valley Mobile Home Park**, P. O. Box 747, 2727 Pennsylvania Avenue, Warren, PA 16365.

This application is for renewal of an NPDES permit to discharge treated sewage to the Unnamed Tributary to Brokenstraw Creek in Brokenstraw Township, **Warren County**. This is an existing discharge.

The receiving water is classified for the following uses: cold water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is the Emlenton Water Company on the Allegheny River located at Emlenton, Venango County, approximately 87.0 miles below point of discharge.

The proposed effluent limits for Outfall No. 001, based on a design flow of 0.0125 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	50
TSS	30	60
Ammonia-Nitrogen (5-1 to 10-31)	5.5	11.0
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	10,700/100 ml as a geometric average	
Total Residual Chlorine	monitor and report	
pH	6.0—9.0 at all times	

The EPA waiver is in effect.

**PA 0222593.** Sewage, **William C. Hickman**, 104 Atlantic Avenue, Elizabeth, PA 15037.

This application is for a new NPDES permit to discharge treated sanitary sewage to an unnamed tributary of Sixteen Mile Creek in North East Township, **Erie County**. This is an existing discharge.

The receiving water is classified for warm water fishery, aquatic life, water supply and recreation. There are no potable water supplies affected by this discharge.

The proposed effluent limits for Outfall 001, based on average design flow of 0.00168 mgd, are:

<i>Parameter</i>	<i>Effluent Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25	50
Total Suspended Solids	30	60
NH <sub>3</sub> -N (5-1 to 10-31)	2	4
(11-1 to 4-30)	6	12
Dissolved Oxygen	minimum of 3.0 mg/l at all times	
Total Residual Chlorine	0.5	1.2
Phosphorus	1.0	
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	2,000/100 ml as a geometric average	
pH	6.0—9.0 standard units at all times	

The EPA waiver is in effect.

## DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

### Applications under the Pennsylvania Clean Streams Law

#### (Part II Permits)

The following permit applications and requests for plan approval have been received by the Department of Environmental Protection (Department). Persons objecting on the grounds of public or private interest to the approval of an application or submitted plan may file a written protest with the Department at the address indicated above each permit application or plan. Each written protest should contain the following: name, address and telephone number; identification of the plan or application to which the protest is addressed and a concise statement in sufficient detail to inform the Department of the exact basis of the protest and the relevant facts upon which it is based. The Department may conduct a fact-finding hearing or an informal conference in response to any given protest. Each writer will be notified in writing of the time and place if a hearing or conference concerning the plan, action or application to which the protest relates is held. To insure consideration by the Department prior to final action on permit applications and proposed plans, initial protests and additions or amendments to protests already filed should be filed within 15 calendar days from the date of this issue of the *Pennsylvania Bulletin*. A copy of each permit application and proposed plan is on file in the office indicated and is open to public inspection.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

#### Applications received for industrial waste and sewage applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

*Southcentral Regional Office: Water Management Program Manager; 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110-8200, (717) 705-4707. Persons who wish to review any of these applications should contact Mary DiSanto at (717) 705-4732.*

**A. 3198401.** Sewage, submitted by **Allen Betts, Jr.**, R. R. 1, Box 409A, Huntingdon, PA 16652 in Smithfield Township, **Huntingdon County** to construct a small flow sewage treatment system to serve their existing residence and correct a malfunctioning onlot system was received in the Southcentral Region on September 9, 1998.

**A. 2298202.** Industrial waste, submitted by **Wenger's Feed Mill, Inc.**, 111 West Harrisburg Avenue, Rheems, PA 17570-0026 in Lykens Township, **Dauphin County** to construct a new feed mill was received in the Southcentral Region on September 17, 1998.

*Northwest Regional Office: Regional Water Management Program Manager; 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**WQM Permit No. 6198402.** Sewage. **Cranberry Venango County General Authority**, P. O. Box 378, Seneca, PA 16346. This project is for the relocation/replacement of a pump station and for a forcemain extension in Cranberry Township, **Venango County**.

**WQM Permit No. 2598413.** Sewage. **Woodberry Development, Inc.**, Tannery Road Subdivision, 4720

Wattsburg Road, Erie, PA 16504. This project is for the construction and operation of a small flow treatment facility to serve four residences in Fairview Township, **Erie County**.

**WQM Permit No. 6298411.** Sewage. **City of Warren**, 318 West Third Avenue, Warren, PA 16365-2388. This project is for the construction of the rerated sewage treatment facility in the City of Warren, **Warren County**.

**WQM Permit No. 2598414.** Sewage. **Robert R. Smith SFTF**, 10301 Lake Pleasant Road, Waterford, PA 16441. This project is for the construction and operation of a small flow treatment facility to serve four residences in Greene Township, **Erie County**.

**WQM Permit No. 2098411.** Sewage. **Marvin N. Hamilton, SRSTP**, 12256 North Watson Run Rd., Conneaut Lake, PA 16316. This project is for the construction of a single residence sewage treatment plant in Vernon Township, **Crawford County**.

*Southwest Regional Office: Water Management Program Manager; 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**A. 9084-S, Amendment No. 1.** Sewerage. **City of Jeannette Municipal Authority**, P. O. Box 168, Jeannette, PA 15644. Application for the construction and operation of an ultraviolet disinfection system at the existing Jeannette WWTP located in Penn Borough, **Westmoreland County**.

**A. 0298410.** Sewerage. **Richland Township**, 4011 Dickey Road, Gibsonia, PA 15044. Application for the construction and operation of sewers and appurtenances to serve the Bakerstown Area located in Richland Township, **Allegheny County**.

**A. 0498404.** Sewerage. **H. Dale Musgrave**, 140 Brewer Road, Freedom, PA 15042. Application for the construction and operation of a small flow sewage treatment plant to serve the Musgrave residence located in New Sewickley Township, **Beaver County**.

#### INDIVIDUAL PERMITS

##### (PAS)

#### NPDES Individual

The following parties have applied for an NPDES permit to discharge stormwater from a proposed construction activity into the surface waters of this Commonwealth. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit and special conditions. These proposed determinations are tentative. Limitations are provided in the permit as erosion and sedimentation control measures and facilities which restrict the rate and quantity of sediment discharged.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision of 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted above the application within 30 days from the date of this public notice. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses



should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, including the erosion and sedimentation control plan for the construction activity, are on file and may be inspected at the office noted above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

*Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

**NPDES Permit PAS10-G339.** Stormwater. **Morgan Brothers Builders**, 288 Lancaster Ave., Box 1074, Frazer, PA 19355, has applied to discharge stormwater from a construction activity located in East Vincent Township, **Chester County**, to unnamed tributary to French Creek.

**NPDES Permit PAS10-G340.** Stormwater. **Gambone Brothers**, P. O. Box 287, Fairview Village, PA 19409, has applied to discharge stormwater from a construction activity located in East Goshen Township, **Chester County**, to East Branch of Ridley Creek.

**NPDES Permit PAS10-G341.** Stormwater. **Dominion Corporation Center Assoc., c/o Realen Properties**, 725 Talamore Drive, P. O. Box 2002, Ambler, PA 19002, has applied to discharge stormwater from a construction activity located in Tredyffrin Township, **Chester County**, to Little Valley Creek.

*Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

*Northampton County Conservation District, District Manager, R. R. 4, Greystone Building, Nazareth, PA 18064-9211.*

**NPDES Permit PAS10U099.** Stormwater. **Tim Buck**, Box 363, Kulpsville, PA 19443, has applied to discharge stormwater from a construction activity located in Moore Township, **Northampton County**, to Monocacy and Catasauqua Creeks.

## SAFE DRINKING WATER

**Applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**

*Southeast Regional Office: Sanitarian Regional Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

**A. 1598512.** Public water supply. **University of Pennsylvania, New Bolton Center**, 382 West Street Road, Kennett Square, PA 19348-1692. This proposal involves the improvement of an existing corrosion control

treatment system. The sodium silicate will be replaced by pH adjustment and the addition of a phosphate inhibitor in East Marlborough Township, **Chester County**.

*Northeast Regional Office: Sanitarian Regional Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**4098504.** Public water supply. **Sandy Run Water Association**, Nelson Contress, R. R. 1, Sandy Run, Freeland, PA 18224. This proposal involves construction of a new wellhouse and treatment building along with the new finished water-storage tank. It is located in Freeland Borough, **Luzerne County**. *Engineer:* John G. Synoski, PE/Schumacher Engineering, Inc.

**4898503.** Public water supply. **Greenwaltz Water Company**, Ted Williams, President, 2521 Delabole Rd., Bangor, PA 18013. This proposal involves developing an existing well (W-1) as a bulk water source for drinking water. *Engineer:* Andrew J. Woods, PE, East Penn Engineering, Co., LTD.

*Southcentral Regional Office: Sanitarian Regional Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4708.*

**A. 0698507.** Public water supply. **Citizens Utilities Water Company of Pennsylvania**, South Heidelberg Township, **Berks County**. *Responsible Official:* Brian J. Hassinger, P.E., General Manager, 4 Wellington Boulevard, Wyomissing Hills, PA 19610. *Type of Facility:* Public water supply well no. 27 with disinfection to serve Heidelberg Run West Development. *Consulting Engineer:* Daniel J. Castellani, P.E., Entech Engineering Inc., 4 South 4th Street, P. O. Box 32, Reading, PA 19603.

*Bureau of Water Supply Management: Division of Drinking Water Management, 400 Market Street, Harrisburg, PA 17105. Contact: Godfrey C. Maduka, (717) 787-9037.*

**A. 9996217.** **Great Spring Waters of America, Inc.**, P. O. Box 499, Poland Spring, Maine 04274; Kristin Tardiff, Eastern Region Water Resources Manager. Applicant requests Department approval for a major permit amendment to replace their well no. 1 with a new production well located in Poland, Maine. The following bottled water brands will be marketed in Pennsylvania: Poland Spring Natural Spring Water, Poland Spring Sparkling Spring Water, Deer Park Spring Water, Deer Park Distilled Water, Ice Mountain Spring Water, Great Bear Natural Spring Water and Poland Spring Distilled Water.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

**Under Act 2, 1995**

**Preamble 1**

**Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Sections 302 and 303 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate identifies a site where a person proposes to, or has been required to, respond to a release

of a regulated substance at a site. Persons intending to use the background or Statewide health standard to remediate a site must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of the cleanup standards identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department and shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

For further information concerning the content of a Notice of Intent to Remediate, contact the Department's Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southcentral Regional Office: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.*

**Distribution Pole 35066S25565**, Columbia Borough, **Lancaster County. PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101, has submitted a Notice of Intent to Remediate site soils contaminated with PCBs. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Columbia Ledger* on September 16, 1998.

**Distribution Pole 33817S26828**, East Donegal Township, **Lancaster County. PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101, has submitted a Notice of Intent to Remediate site soils contaminated with PCBs. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Columbia Ledger* on September 16, 1998.

**Distribution Pole 20647S32034**, Mechanicsburg Borough, **Cumberland County. PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101, has submitted a Notice of Intent to Remediate site soils contaminated with PCBs. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Carlisle Sentinel* on June 16, 1998.

**Distribution Pole 28544S35576**, South Hanover Township, **Dauphin County. PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101-1179 has submitted a Notice of Intent to Remediate site soils contaminated with PCBs. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Patriot News* on July 22, 1998. This corrects a notice in the September 5, 1998 issue of the *Pennsylvania Bulletin*.

**American Insulator**, New Freedom Borough, **York County. Franklin Center, Inc., c/o James R. Holley & Assoc., Inc.**, 18 South George Street, Suite 501, York, PA 17401 has submitted a Notice of Intent to Remediate

site soils and groundwater contaminated with BTEX and PHCs. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *York Daily Record* on September 11, 1998.

*Northcentral Regional Office: Michael C. Welch, Environmental Cleanup Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (717) 321-6525.*

**Distribution Pole No. 17026N38879**, Woodward Township, **Lycoming County. PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101 has submitted a Notice of Intent to Remediate soil and groundwater contaminated with PCBs. The applicant proposes to remediate the site to meet the Statewide health standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Williamsport Sun-Gazette* on July 22, 1998.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

### Preamble 2

**Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Sections 304 and 305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use a site-specific standard or who intend to remediate a site in a Special Industrial Area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of the cleanup standards identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department and shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific cleanup standard, in whole or in part, and for sites determined to be located in Special Industrial Areas. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area by the person conducting remediation. For the sites identified, a municipality may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, a municipality may request that the person identified, as the remediator of a site, develop and implement a public

involvement plan. Requests to be involved, and comments, should be directed to the remediator of a site. For further information concerning the content of a Notice of Intent to Remediate, contact the Department's Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office listed. TDD users may telephone the Department through the AT&T Relay Service at 1 (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southcentral Regional Office: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.*

**Jomax Garment Factory**, City of York, **York County**. Redevelopment Authority of City of York, One Market Way West, York, PA 17401 has submitted a Notice of Intent to Remediate site soils contaminated with heavy metals and site groundwater contaminated with solvents. The applicant proposes to remediate the site as a Special Industrial Area. A summary of the Notice of Intent to Remediate was reported to have been published in the *York Daily Record* on September 1, 1998.

**Conrad's Delicatessen**, City of York, **York County**. York Hospital Federal Credit Union, 1001 South George Street, York, PA 17405 has submitted a Notice of Intent to Remediate site soils and groundwater contaminated with BTEX, PAHs and PHCs. The applicant proposes to remediate the site as a Special Industrial Area. A summary of the Notice of Intent to Remediate was reported to have been published in the *York Daily Record* on September 15, 1998. The applicant withdrew a previously submitted Notice of Intent to Remediate to meet the site-specific standard at this site.

## SOLID AND HAZARDOUS WASTE

### RESIDUAL WASTE PROCESSING FACILITIES

**Applications submitted under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.**

*Regional Office: Regional Solid Waste Manager, Suite 6010, 555 North Lane, Lee Park, Conshohocken, PA 19428.*

**A. 301077. Safety Kleen (PPM) Inc.**, 4105 Whitaker Avenue, Philadelphia, PA 19124. This application was submitted for the modification of an existing residual waste transfer station permit to allow for the processing of wastewater containing less than 50 ppm of PCBs. The application was also submitted to formally reflect the name change of the facility from Laidlaw Environmental Services (Tucker) Inc. to Safety Kleen (PPM) Inc. as a result of a recent merger between the two companies. The application was received in the Southeast Regional Office on September 4, 1998.

## AIR QUALITY

### Notice of Plan Approval and Operating Permit Applications

#### Nonmajor Sources and Modifications

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State

operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities. Although the sources covered by these applications may be located at a major facility, the sources being installed or modified do not trigger major new source review or prevention of significant deterioration requirements.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Offices identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to file protests or comments on the proposed plan approval and/or operating permits must submit the protest or comment within 30 days from the date of this notice. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Any comments or protests filed with the Department's Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior to the date of the hearing.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act and regulations adopted under the act.

### OPERATING PERMITS

**Applications received and intent to issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015).**

*Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (717) 826-2531.*

**35-320-001: Eureka Security Printing Co., Inc.** (P. O. Box 147, Jessup, PA 18434) for operation of a printing system in Jessup Borough, **Lackawanna County**.

**39-310-014: Coplay Aggregates, Inc.** (5101 West Coplay Road, P. O. Box 58, Northampton, PA 18067) for operation of a stone crushing plant in Whitehall Township, **Lehigh County**.

**48-301-043: George G. Bensing Funeral Home, Inc.** (2165 Community Drive, Bath, PA 18014) for operation of a crematory incinerator in Moore Township, **Northampton County**.

**48-322-001A: Grand Central Sanitary Landfill** (1963 Pen Argyl Road, Pen Argyl, PA 18072) for operation of a landfill gas collection system in Plainfield Township, **Northampton County**.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**06-1040A: East Penn Mfg. Co., Inc.** (P. O. Box 147, Lyon Station, PA 19536-0147) for a secondary lead smelter and associated sources controlled by seven fabric collectors, spray scrubber, demister and two wetted packed bed scrubbers in Richmond Township, **Berks County**. The source is subject to 40 CFR 60, Subpart L, Standards of Performance for New Stationary Sources and 40 CFR 63, Subpart X, National Emission Standards for Hazardous Air Pollutants for Source Categories.

**06-1069A: East Penn Mfg. Co., Inc.** (P. O. Box 147, Lyon Station, PA 19536-0147) for a wastewater treatment plant controlled by three fabric collectors in Richmond Township, **Berks County**. This source is subject to 40 CFR 61, Subpart E, National Emission Standards for Hazardous Air Pollutants.

**07-302-031: Appleton Papers Inc.** (100 Paper Mill Road, Roaring Spring, PA 16673-1488) for operation of the power boiler No. 4, in Roaring Spring Borough, **Blair County**. This source is subject to 40 CFR 60, Subpart Db, Standards of Performance for New Stationary Sources.

**07-313-007A: Appleton Papers Inc.** (100 Paper Mill Road, Roaring Spring, PA 16673-1488) for bleach plant operations controlled by a packed column wet scrubber at their Spring Mill Facility in Roaring Spring Borough, **Blair County**. This source is subject to 40 CFR 63, Subpart S, National Emission Standards for Hazardous Air Pollutants.

**21-2005A: Department of Corrections, State Correctional Institute (SCI)** (P. O. 598, Camp Hill, PA 17001) for installation of a baghouse to control the particulate matter emissions and opacity from the exhaust gases on the existing boilers located at 2520 Lisburn Road in Lower Allen Township, **Cumberland County**.

**21-310-031A: Valley Quarries, Inc.** (P. O. Box J, Chambersburg, PA 17201) for a limestone crushing plant controlled by wet suppression and a fabric filter in Southampton Township, **Cumberland County**. Several sources within the plant are subject to 40 CFR 60, Subpart OOO, Standards of Performance for New Stationary Sources.

**67-3018A: Penn-Mar Castings, Inc.** (500 Broadway, Hanover, PA 17331) for two sand mixers and two welding tables controlled by a fabric filter in Hanover Borough, **York County**.

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.*

**08-313-050A: OSRAM SYLVANIA Products, Inc.** (Hawes Street, Towanda, PA 18848) for operation of a molybdenum alloy calciner, associated processing equipment and associated air cleaning devices (a fabric collector and HEPA filter) in Department 83, Building 41 in North Towanda Township, **Bradford County**.

**08-399-034C: OSRAM SYLVANIA Products, Inc.** (Hawes Street, Towanda, PA 18848) for operation of various pieces of molybdenum powder handling equipment and associated air cleaning devices (a fabric collector and HEPA filter) in Department 83, Building 41 in North Towanda Township, **Bradford County**.

**08-313-003C: OSRAM SYLVANIA Products, Inc.** (Hawes Street, Towanda, PA 18848) for operation of various television phosphor drying ovens and furnaces

and associated air cleaning device (a packed bed scrubber) in Department 022, Building 10, in North Towanda Township, **Bradford County**.

**08-313-038G: OSRAM SYLVANIA Products, Inc.** (Hawes Street, Towanda, PA 18848) for operation of a scrap tungsten crushing and screening operation and associated air cleaning devices (a cartridge collector and absolute filter) in Department 009, Building 25A, in Towanda Borough, **Bradford County**.

**18-318-013A: Avis America** (P. O. Box 420, Avis, PA 17721) for operation of various modular home manufacturing operations in Pine Creek Township, **Clinton County**.

**60-302-008: BBA Nonwovens Simpsonville, Inc.** (P. O. Box 20, Lewisburg, PA 17837) for operation of a natural gas/no. 6 fuel oil-fired boiler previously owned and operated by International Paper Company, Veratec Division, in Kelly Township, **Union County**.

**14-313-035A: Rutgers Organics, Inc.** (201 Struble Road, State College, PA 16801) for operation of a chemical process facility (MMPDC Intermediate) and associated air cleaning devices (various condensers, two packed tower scrubbers and a regenerative thermal oxidizer) in College Township, **Centre County**.

**19-317-007D: Wise Foods, Inc.** (228 Raseley Street, Berwick, PA 18603-4599) for operation of a potato chip fryer (Fryer A) and associated air cleaning device (an oil mist eliminator) in Berwick Borough, **Columbia County**.

#### Notice of Intent to Issue Title V Operating Permits

Under 25 Pa. Code § 127.521, the Department of Environmental Protection (Department) intends to issue a Title V Operating Permit to the following facilities. These facilities are major facilities subject to the operating permit requirements under Title V of the Federal Clean Air Act and 25 Pa. Code Chapter 127, Subchapters F (relating to operating permit requirements) and G (relating to Title V operating permits).

Appointments to review copies of the Title V application, proposed permit and other relevant information must be made by contacting Records Management at the regional office telephone number noted. For additional information, contact the regional office noted.

Interested persons may submit written comments, suggestions or objections concerning the proposed Title V permit to the regional office within 30 days of publication of this notice. Written comments submitted to the Department during the 30-day public comment period shall include the name, address and telephone number of the person submitting the comments, along with the reference number of the proposed permit. The commentator should also include a concise statement of objections to the permit issuance and the relevant facts upon which the objections are based.

The Department reserves the right to hold a public hearing on the proposed action based upon the information received during the public comment period and will provide notice of any scheduled public hearing at least 30 days in advance of the hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation where the facility is located.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Attn: Kanubhai L. Patel, (717) 705-4702.*

**36-05005: Heritage Custom Kitchens, Inc.** (215 Diller Avenue, New Holland, PA 17557) located in New Holland Borough, **Lancaster County**. The facility manufactures high quality wood custom kitchen cabinets. The operations primarily emit volatile organic compounds (VOCs) and hazardous air pollutants (HAPs).

#### PLAN APPROVALS

**Applications received and intent to issue Plan Approvals under the Air Pollution Control Act (35 P. S. §§ 4001—4015).**

*Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (717) 826-2531.*

**54-313-073A: Air Products & Chemicals, Inc.** (P. O. Box 351, Tamaqua, PA 18252) for modification of the nitrogen trifluoride north plant at the facility located on R. R. 1, Rush Township, **Schuylkill County**.

**66-320-001: The Procter & Gamble Paper Products Co.** (P. O. Box 32, Mehoopany, PA 18629) for installation of two rotogravure printing lines at the facility located on Route 87, Washington Township, **Wyoming County**.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**06-1069C: East Penn Mfg. Co., Inc.** (P. O. Box 147, Lyon Station, PA 19536-0147) for a battery assembly line controlled by a fabric collector at S-1 and a battery operation controlled by a packed bed scrubber at S-1 in Richmond Township, **Berks County**. This source is subject to 40 CFR 60, Subpart KK, Standards of Performance for New Stationary Sources.

**06-5037A: McConway & Torley Corp.** (230 Railroad Street, Kutztown, PA 19530) for the pit ventilation system controlled by a fabric collector in Kutztown Borough, **Berks County**.

**36-03071: Humane League of Lancaster** (2195 Lincoln Highway East, Lancaster, PA 17602) for installation of two animal crematories in East Lampeter Township, **Lancaster County**.

**67-304-043A: DONSCO, Inc.** (P. O. Box 2001, Wrightsville, PA 17368) for modification of the existing iron foundry melt shop to include the installation of two electric furnaces in Wrightsville, **York County**.

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.*

**14-399-015: TRS Ceramics, Inc.** (2820 East College Avenue, State College, PA 16801) for construction of a ceramic powder mixing/molding process and associated air cleaning device (a cartridge collector) in College Township, **Centre County**.

**08-302-041: Cummings Lumber Co., Inc.** (P. O. Box 6, Troy, PA 16947) for construction of a wood-fired boiler and associated air cleaning devices (two mechanical collectors) in Troy Township, **Bradford County**. This boiler will be subject to Subpart Dc of the Federal Standards of Performance for New Stationary Sources.

**08-399-019C: OSRAM SYLVANIA Products, Inc.** (Hawes Street, Towanda, PA 18848) for construction of a chemical reactor (cobalt recovery) and associated air

cleaning device (a condenser) in Building 25A in Towanda Borough, **Bradford County**.

**14-399-009H: Murata Electronics North America, Inc.** (1900 West College Avenue, State College, PA 16801) for construction of two ceramic chip capacitor binder removal ovens and associated air cleaning devices (electrically-heated afterburners) in Ferguson Township, **Centre County**.

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**25-957A: Hanes Erie, Inc.** (2733 West 11th Street, Erie, PA 16505) for construction of a new paint spray line in Millcreek Township, **Erie County**.

**25-197A: Erie Bronze and Aluminum Co.** (6300 West Ridge Road, Erie, PA 16505) for construction of two 450 kW furnaces, one furnace rated at 300 kW and installation of a fabric collector in Fairview Township, **Erie County**.

**25-316-006A: International Paper Co., Erie Mill** (1540 East Lake Road, Erie, PA 16533) for minor modification of Operating Permit 25-316-006; bleach plant scrubbers, for the addition of peroxide flow and monitoring equipment, and applicable adjustments to scrubber fluids in Erie, **Erie County**.

#### REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT)

##### Public Hearing

The Department of Environmental Protection (Department) will conduct a public hearing on Tuesday, October 20, 1998, beginning at 1 p.m. in the Air Quality conference room at the Meadville Regional Office located at 230 Chestnut Street.

The hearing is for the Department to accept testimony concerning the Department's decision to approve, with conditions, the revised Reasonably Available Control Technology (RACT) plans by **American Refining Group, Inc. Bradford Refinery (formerly Witco Corp., Bradford)** 77 North Kendall Avenue, Bradford, PA 16701 located in Bradford, **McKean County** to meet the requirements under 25 Pa. Code §§ 129.91—129.95 (RACT), concerning the emissions of oxides of nitrogen (NOx) and volatile organic compounds (VOC) from various air contamination sources. The final RACT proposals will be submitted to the United States Environmental Protection Agency (EPA) as a revision to Pennsylvania's State Implementation Plan.

The proposed SIP revisions do not adopt new regulations. They incorporate the provisions and requirements contained in RACT approvals for these facilities to comply with current regulations.

The preliminary RACT determinations, if finally approved, will be incorporated into Plan Approvals and/or Operating Permits for the facilities and will be submitted to the EPA as a revision to Pennsylvania's State Implementation Plan.

The following is a revised summary of the preliminary NOx/VOC RACT determination for American Refining Group, Inc.:

<i>Source</i>	<i>Control</i>	<i>Emission Limit</i>
Boiler #3	unit derated to 99 MMBTU/hr	0.41#NO <sub>x</sub> /MMBTU, 120 TPY 12,000 gallons refinery oil per day
Boiler #4	unit derated to 99 MMBTU/hr	0.41#NO <sub>x</sub> /MMBTU, 120 TPY 12,000 gallons refinery oil per day
Boiler #5	boiler tune-up	0.5#/MMBTU, 84.5 #/hr
Heaters	presumptive RACT< 20MMBTU/hr heat input	
Hirt Burner	presumptive RACT< 20MMBTU/hr heat input	
gasoline loading	vapor recovery unit	
storage tanks>40,000 gal	vapor pressure<1.5 psia	
oil/water separators	less than 200 gal VOC per day	
fugitive equipment leaks	LDAR (25 Pa. Code § 129.58)	

For the above facility, a public hearing will be held for the purpose of receiving comments on the above proposed Operating Permit and the proposed SIP revisions. The public hearing is scheduled as follows: Meadville Regional Office, Air Quality conference room, 230 Chestnut Street, Meadville, PA 16335, on Tuesday, October 20, 1998, 1 p.m. to 3 p.m.

Persons wishing to present testimony at the hearing should contact Matthew Williams, Air Pollution Control Engineer, Department of Environmental Protection, 230 Chestnut Street, Meadville, PA 16335-3494, (814) 332-6940 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to a maximum of 10 minutes and two written copies of the oral testimony are required. Each organization is requested to designate one witness to present testimony in its own behalf.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodations to do so should contact Matthew Williams at (814) 332-6940 or the Pennsylvania AT&T relay service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Those unable to attend the hearing but wish to comment should provide written comments to Matthew Williams, Air Pollution Control Engineer, Department of Environmental Protection, 230 Chestnut Street, Meadville, PA 16335-3494. Comments should be submitted within 30 days of the date of this publication notice.

All the pertinent documents (applications, review memos and draft approvals) are also available for review from 8 a.m. to 4 p.m. at the Meadville Regional Air Quality Office. Appointments for scheduling a review must be made by calling the Department contact person noted previously.

## MINING

### APPLICATIONS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to the applications will also address the appli-

cable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District mining office indicated above each application. Where a 401 water quality certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for the certification.

Written comments or objections, or requests for informal conferences on applications, may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public notices of filing of permit applications, opportunity for comment, and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. The NPDES permits will contain, at a minimum, technology-based effluent limitations (as described in the Department's regulations—25 Pa. Code §§ 77.522, 87.102, 88.92, 88.187, 88.242, 89.52 and 90.102) for iron, manganese, suspended solids, settleable solids, alkalinity and pH. In addition to the above, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit when necessary for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity within the above-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department

on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

*Hawk Run District Office, P. O. Box 209, off Empire Road, Hawk Run, PA 16840.*

#### *Coal Applications Received*

**17950115. Larson Enterprises, Inc.** (P. O. Box 96, Kylertown, PA 16847), revision to an existing bituminous surface mine permit for a change in land use from a postmining land use of forestland to industrial/commercial, Morris, Cooper and Graham Townships, **Clearfield County**. Application received September 4, 1998.

**17980120. R. B. Contracting** (R. D. 1, Box 13, Curwensville, PA 16833), commencement, operation and restoration of a bituminous surface mine permit in Westover Borough, **Clearfield County** affecting 64.1 acres, receiving streams: unnamed tributaries to Chest Creek. Application received September 10, 1998.

**14663003. Power Operating Co., Inc.** (P. O. Box 25, Osceola Mills, PA 16666), major revision to an existing bituminous surface mine permit to apply biosolids (stabilized sewage sludge) to enhance vegetation on a 920 acre site in Rush Township, **Centre County**. Application received September 10, 1998.

*Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.*

**26823024R. Robert Sperko** (R. D. 1, Box 400 H, McClellandtown, PA 15458). Renewal application received for continued reclamation of a bituminous surface mine located in German Township, **Fayette County**, affecting 22.2 acres. Receiving streams: North Branch of Browns Run and South Branch of Browns Run to Monongahela River. Renewal application received: September 15, 1998.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

**24980104. Fairview Coal Company** (P. O. Box R, Ridgway, PA 15853) Commencement, operation and restoration of a bituminous surface strip and auger operation in Horton Township, **Elk County** affecting 58.4 acres. Receiving streams: An unnamed tributary to Johnson Run and an unnamed tributary to Little Toby Creek. Application to include a postmining land use change from forestland to wildlife habitat on the lands of John L. and Margaret A. Buhler. Application received September 15, 1998.

**10890114. Rosebud Mining Company** (R. D. 9, Box 379A, Kittanning, PA 16201) Renewal of an existing bituminous surface strip operation in Bruin Borough and Parker Township, **Butler County** affecting 211.5 acres. Receiving streams: Unnamed tributaries to South Branch of Bear Creek and South Branch of Bear Creek. Application received September 16, 1998.

**10980109. Ben Hal Mining Company** (389 Irishtown Road, Grove City, PA 16127) Commencement, operation and restoration of a bituminous surface strip operation in Muddy Creek Township, **Butler County** affecting 141.2 acres. Receiving streams: An unnamed tributary to Bear Run and Bear Run. Application received September 15, 1998.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**19980101. Kovalchick Coal Co.** (R. R. 1, Box 152R, New Ringgold, PA 17960), commencement, operation and restoration of an anthracite surface mine operation in Conyngham Township, **Columbia County** affecting 215.0 acres, receiving stream—Mahanoy Creek. Application received September 1, 1998.

**54880202R2. Morea Cogen, Inc.** (46 Public Square, Suite 600, Wilkes-Barre, PA 18701), renewal of an existing coal refuse reprocessing operation in Mahanoy Township, **Schuylkill County** affecting 200.8 acres, receiving stream—none. Application received September 4, 1998.

**40980201. Bonner Shale Company** (R. R. 1, Box 410C, Humboldt, Hazleton, PA 18201), commencement, operation and restoration of an anthracite coal refuse reprocessing operation in Hazle Township, **Luzerne County** affecting 92.0 acres, receiving stream—none. Application received September 4, 1998.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

#### *Noncoal Applications Received*

**25820301. Frank Tucci** (R. D. 2, Drakes Mills, Cambridge Springs, PA 16403), renewal of an existing sand and gravel operation in McKean Township, **Erie County** affecting 11.7 acres. Receiving streams: An unnamed tributary to Elk Creek. Application received September 11, 1998.

### **Bureau of Deep Mine Safety**

#### **Request for Variance DLR Coal Company, Inc.**

The Bureau of Deep Mine Safety has received a request for variance from DLR Coal Company, Inc. The following notification contains a summary of this request. Complete copies of the variance request may be obtained from Matthew A. Bertovich by calling (724) 439-7469.

The Department of Environmental Protection (Department) is publishing a summary of the request to solicit comments from affected parties on the proposed variance request. Comments may be used by the Bureau to assist in its investigation of the variance request. Comments will be accepted for 30 days following the publication of this notice. All comments should be addressed to: Richard E. Stickler, Director, Bureau of Deep Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown, PA 15401.

Section 702 of the Bituminous Coal Mine Act (52 P. S. §§ 701 and 702) (act) provides a mechanism for operators to obtain variances from specific requirements of the act to accommodate the adoption of new machinery, equipment, tools, supplies, methods or processes.

Section 242(c) states that where belt conveyors are installed, main stoppings and regulators shall be so arranged as to reduce the quantity of air traveling in the belt conveyor entry to a minimum for effective ventilation and to provide an intake air split as an escapeway from the face area to the main air current.

*Summary of the request.* DLR Coal Company, Inc. requests a variance to allow for the common ventilation of belt conveyor entries with other entries at the **Triple K Mine**.

#### **RoxCoal, Inc.**

The Bureau of Deep Mine Safety has received a request for variance from RoxCoal, Inc. The following notification contains a summary of this request. Complete copies of



the variance request may be obtained from Matthew A. Bertovich by calling (724) 439-7469.

The Department is publishing a summary of the request to solicit comments from affected parties on the proposed variance request. Comments may be used by the Bureau to assist in its investigation of the variance request. Comments will be accepted for 30 days following the publication of this notice. All comments should be addressed to: Richard E. Stickler, Director, Bureau of Deep Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown, PA 15401.

Section 702 of the Bituminous Coal Mine Act (52 P. S. §§ 701 and 702) (act) provides a mechanism for operators to obtain variances from specific requirements of the act to accommodate the adoption of new machinery, equipment, tools, supplies, methods or processes.

Section 242(c) states that where belt conveyors are installed, main stoppings and regulators shall be so arranged as to reduce the quantity of air traveling in the belt conveyor entry to a minimum for effective ventilation and to provide an intake air split as an escapeway from the face area to the main air current.

*Summary of the request:* RoxCoal, Inc. requests a variance to allow for the common ventilation of belt conveyor entries with other entries at the **Barbara B Mine**.

#### **RoxCoal, Inc.**

The Bureau of Deep Mine Safety has received a request for variance from RoxCoal Inc. The following notification contains a summary of this request. Complete copies of the variance request may be obtained from Matthew A. Bertovich by calling (724) 439-7469.

The Department is publishing a summary of the request to solicit comments from affected parties on the proposed variance request. Comments may be used by the Bureau to assist in its investigation of the variance request. Comments will be accepted for 30 days following the publication of this notice. All comments should be addressed to: Richard E. Stickler, Director, Bureau of Deep Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown, PA 15401.

Section 702 of the Bituminous Coal Mine Act (52 P. S. §§ 701 and 702) (act) provides a mechanism for operators to obtain variances from specific requirements of the act to accommodate the adoption of new machinery, equipment, tools, supplies, methods or processes.

Section 242(c) states that where belt conveyors are installed, main stoppings and regulators shall be so arranged as to reduce the quantity of air traveling in the belt conveyor entry to a minimum for effective ventilation and to provide an intake air split as an escapeway from the face area to the main air current.

*Summary of the request:* RoxCoal, Inc. requests a variance to allow for the common ventilation of belt conveyor entries with other entries at the **Longview Mine**.

#### **RoxCoal, Inc.**

The Bureau of Deep Mine Safety has received a request for variance from RoxCoal, Inc. The following notification contains a summary of this request. Complete copies of the variance request may be obtained from Matthew A. Bertovich by calling (724) 439-7469.

The Department is publishing a summary of the request to solicit comments from affected parties on the proposed variance request. Comments may be used by the

Bureau to assist in its investigation of the variance request. Comments will be accepted for 30 days following the publication of this notice. All comments should be addressed to: Richard E. Stickler, Director, Bureau of Deep Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown, PA 15401.

Section 702 of the Bituminous Coal Mine Act (52 P. S. §§ 701 and 702) (act) provides a mechanism for operators to obtain variances from specific requirements of the act to accommodate the adoption of new machinery, equipment, tools, supplies, methods or processes.

Section 242(c) states that where belt conveyors are installed, main stoppings and regulators shall be so arranged as to reduce the quantity of air traveling in the belt conveyor entry to a minimum for effective ventilation and to provide an intake air split as an escapeway from the face area to the main air current.

*Summary of the request:* RoxCoal, Inc. requests a variance to allow for the common ventilation of belt conveyor entries with other entries at the **Agustus Mine**.

### **APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT**

#### **ENCROACHMENTS**

The following Dam Safety and Encroachment permit applications, requests for Environmental Assessment approval and requests for water quality certification have been received by the Department of Environmental Protection (Department). Section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)) requires the State to certify that the involved projects will not violate the applicable provisions of 33 U.S.C.A. §§ 1311–1313, 1316 and 1317, as well as relevant State requirements. Initial requests for 401 certification will be published concurrently with the permit application. Persons objecting to approval of a request for certification under section 401 or to the issuance of a Dam Safety or Encroachment Permit or the approval of Environmental Assessments must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

### **Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the Federal Water Pollution Control Act.**

*Northeast Regional Office: Regional Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-5485.*

**E45-361.** Encroachment. **Brier Crest Woods, POA**, P. O. Box 236, Blakeslee, PA 18610. To dredge the reservoir area of PA DEP Dam No. D45-245 (known as Brier Crest Woods Dam) having a surface area of approximately 26.2 acres for the purpose of improving recreational opportunities. The project is located in Brier Crest Woods Residential Community, approximately 0.75 mile southwest of the intersection of S. R. 0115 and S. R. 0903



(Blakeslee, PA Quadrangle N: 8.2 inches; W: 7.2 inches), in Tunkhannock Township, **Monroe County** (Philadelphia District, U. S. Army Corps of Engineers).

**E54-255.** Encroachment. **Frailey Township**, 23 Maryland Street, Donaldson, PA 17981. To maintain a road crossing of Middle Creek, consisting of an 8.0-foot × 5.0-foot concrete box culvert. The structure is being replaced in conjunction with a mine reclamation project (OSM 54 (4214) 101.1—Middle Creek South). The road crossing is located on T-571, approximately 1.3 miles west of the intersection of T-571 and S. R. 0209 (Minersville, PA Quadrangle N: 3.9 inches; W: 16.9 inches), in Frailey Township, **Schuylkill County** (Baltimore District, U. S. Army Corps of Engineers).

**E54-256.** Encroachment. **Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation**, 2 Public Square, 5th Floor, Wilkes-Barre, PA 18711-0790. To reconstruct approximately 1,300 l. f. of the channel of Middle Creek and to place fill in a water-filled strip pit having an area of approximately 1.1 acres, for the purpose of restoring an abandoned mine site. The project (OSM 54 (4214) 101.1—Middle Creek South) is located north of T-571 (Minersville, PA Quadrangle N: 4.6 inches; W: 17.2 inches), in Frailey Township, **Schuylkill County** (Baltimore District, U. S. Army Corps of Engineers).

*Northcentral Region: Water Management, Soils and Waterways Section, F. Alan Sever, Chief, 208 West Third St., Suite 101, Williamsport, PA 17701.*

**E08-339.** Encroachment. **Sun Pipe Line Co.**, P. O. Box 2086, Sinking Springs, PA 19608. To repair and maintain 25 feet of an 8 inch high pressure petroleum pipe line encased in a 12 inch casing and to stabilize 30 feet up-stream and downstream of the streambank on an unnamed tributary to Towanda Creek located 1,000 feet west from the intersection of RT 14 and SR 2006 (Ralston, PA Quadrangle N: 22.0 inches; W: .1 inch) in Canton Township, **Bradford County**. Estimated stream disturbance is 100 linear feet with no wetland impacts; stream classification Cold Water Fishery.

*Northwest Regional Office: Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**E10-283.** Encroachment. **James A. West**, 222 Oxford Blvd., Allison Park, PA 15101. To place fill in 0.06 acre of two separate wetland areas as part of the Laurelwood commercial rental storage unit project. The project is located approximately 200 feet north of the Rochester Road (S. R. 3022) underpass under the Pennsylvania Turnpike (I-76). This project will also include the creation of at least 0.06 acre of replacement wetlands approximately 100 feet west of the Rochester Road (S. R. 3022) underpass under the Pennsylvania Turnpike (I-76) (Mars, PA Quadrangle N: 13.6 inches; W: 16.4 inches) located in Cranberry Township, **Butler County**.

**E20-461.** Encroachment. **Cambridge Springs Borough**, 26 Federal Street. To place and maintain within the floodplain of French Creek the following: 1) treatment process piping and storage units underground; and 2) a 32-foot-long by 17-foot-wide building addition adjacent to the existing Cambridge Springs Borough Drinking Water Treatment Facility. This project is necessary for this facility to upgrade and meet current drinking water treatment requirements. The project is located adjacent to the existing water treatment facility on the north side of

French Creek approximately 600 feet southwest of the intersection of S. R. 0006/0019 and S. R. 0099 in Cambridge Springs Borough (Cambridge Springs, PA Quadrangle N: 10.3 inches; W: 8.0 inches) located in Cambridge Springs Borough, **Crawford County**.

*Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E56-285.** Encroachment. **Borough of Confluence**, P. O. Box 99, Confluence, PA 15424. To rehabilitate and maintain an existing steel truss/girder bridge having four spans of 65.4 feet each and an underclearance of 14.5 feet over the Youghiogheny River (HQ-CWF) for the purpose of developing a pedestrian/bikeway. Also during rehabilitation, to construct and maintain two temporary causeways in the Youghiogheny River. The project is located along old S. R. 0281 in the Borough of Confluence (Confluence, PA Quadrangle N: 10.4 inches; W: 16.0 inches) in Confluence Borough and Addison Township, **Somerset County** and Henry Clay Township in **Fayette County**.

### DAM SAFETY

**Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the Federal Water Pollution Control Act.**

*Central Office: Bureau of Waterways Engineering, 400 Market Street, 6th Floor, P. O. Box 8554, Harrisburg, PA 17105-8554, (717) 787-8568.*

**D22-099.** Dam. **Richard and Cathy Yingst** (7100 Fishing Creek Valley Road, Harrisburg, PA 17112). To construct, operate and maintain a dam across a tributary to Fishing Creek approximately 3.4 miles north of the intersection of U. S. Route 322 and I-81 off of Fishing Creek Valley Road for the purpose of watering livestock, irrigation, fire protection, recreation and aesthetics (Enders, PA Quadrangle N: 3.6 inches; E: 13.7 inches) in West Hanover Township, **Dauphin County**.

### ENVIRONMENTAL ASSESSMENT

**Requests for Environmental Assessment approval under 25 Pa. Code § 105.15 and requests for certification under section 401 of the Federal Water Pollution Control Act.**

*Central Office: Bureau of Waterways Engineering, 400 Market Street, 6th Floor, P. O. Box 8554, Harrisburg, PA 17105-8554, (717) 787-8568.*

**EA09-016CO.** Environmental Assessment. **Legacy Oaks Development Associates, L. P.** (975 Easton Road, Warrington, PA 18976). To construct and maintain a nonjurisdictional dam in the watershed of a tributary to Little Neshaminy Creek (WWF, MF) impacting approximately 0.56 acre of wetlands (PEM) for the purpose of stormwater management at the proposed Legacy Oaks subdivision located immediately northwest of the intersection of Street Road (S. R. 3001) and Folly Road (T-389) (Ambler, PA Quadrangle N: 22.60 inches; W: 6.25 inches) in Warrington Township, **Bucks County**.

## ACTIONS

### FINAL ACTIONS TAKEN UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

[National Pollution Discharge Elimination System Program (NPDES)]

#### DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

##### (Part I Permits)

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications and requests for plan approval and has issued the following significant orders.

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514), and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Environmental Hearing Board, 400 Market Street, Second Floor, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

#### Industrial waste and sewerage actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

*Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.*

**WQM Permit No. 4698403.** Sewerage. **Robert A. Payne**, 2205 Wentz Church Road, Lansdale, PA 19446. Construction and operation of Molly's Run Country Kennels sewage treatment plant to replace the existing failing septic tank, sand mound system located in Worcester Township, **Montgomery County**.

**WQM Permit No. 0997403, Amendment No. 1.** Sewerage. **Milford-Trumbauersville Area Sewer Authority**, P. O. Box 126, Spinnerstown, PA 18968. Approval to amend an existing permit for the construction of a 6.6—l. f. 8 inch gravity sewer a pump station and a 1,750 l. f. 4-inch force main to serve Zion Hill Area located in Springfield Township, **Bucks County**.

**NPDES Permit No. PA0057487.** Sewerage. **Frontier Wood Products, Inc.**, 1025 North West End Boulevard, Quakertown, PA 18951 is authorized to discharge from a facility located in Richland Township, **Bucks County** into Swale to Tohickon Creek.

**NPDES Permit No. PA0042641.** Sewerage. **Nockamixon State Park**, 1542 Mountain View Drive, Quakertown, PA 18951 is authorized to discharge from a facility located in Bedminster Township, **Bucks County**.

**NPDES Permit No. PA0030848.** Sewerage. **Unionville Chadds Ford School District**, 740 Unionville Road, Kennett Square, PA 19348 is authorized to discharge from a facility located in Pennsbury Township, **Chester County**.

**NPDES Permit No. PA0057550.** Sewerage. **William J. Irvin**, 26 Juniper Court East, Harleysville, PA 19438 is authorized to discharge from a facility located in Upper Salford Township, **Montgomery County** into unnamed tributary to Perkiomen Creek.

**NPDES Permit No. PA0036200.** Sewerage. **Radley Run Mews Sewers Association**, 1131 Mews Lane, West Chester, PA 19382 is authorized to discharge from a facility located in Birmingham Township, **Chester County** into Plum Run.

*Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**Permit No. 6498401.** Sewerage. **Union Lake Hotel, Inc.**, R. R. 1, Box 74, Equinunk, PA 18417. Permit to construct a sewage treatment plant, located in Manchester Township, **Wayne County**.

*Northcentral Regional Office: 208 West Third Street, Suite 101, Grit Building, Williamsport, PA 17701.*

**NPDES Permit No. PA0032522.** Industrial waste. **DCNR Bureau of State Parks, Sizerville State Park**, P. O. Box 8551, Harrisburg, PA 17105-8551. Renewal granted for industrial waste swimming pool filter backwash to discharge to East Branch Cowley Run. Facility located at Portage Township, **Cameron County**.

**WQM Permit No. 4798401.** Sewerage. **Pennsylvania Power and Light**, 2 North Ninth Street, Allentown, PA 18101-1179. Applicant approved for construction and operation of Sequencing Batch Reactor package sewage treatment plant to serve Montour Preserve Environmental Education Center expansion. Facility located at Anthony Township, **Montour County**.

**WQM Permit No. 1990410.** Sewerage transfer. **Matthew D. Williams**, R. D. 1, Box 83, Catawissa, PA 17820. Applicant's request for transfer was granted to discharge treated wastewater from a single residence system. Facility located at Roaring Creek Township, **Columbia County**.

**WQM Permit No. 5995406.** Sewerage amendment. **Wanderland Trails Inc.**, 7 Crosskeys Road, Collegeville, PA 19426. Amendment approved for additional gallons of aerated sludge digestion and pretreatment to Bucktail RV Resort wastewater treatment plant. Facility located at Richmond Township, **Tioga County**.

**WQM Permit No. 4198402-t1.** Sewerage transfer. **Timothy and Tammy Ulmer**, 3978 Pleasant Valley Rd., Cogan Station, PA 17728. Request for transfer granted for a single residence treatment system previously owned by Christopher Coder. Facility located at Loyalsock Township, **Lycoming County**.

*Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**NPDES Permit No. PA0000361.** Industrial waste. **Municipal Authority of Westmoreland County** is authorized to discharge from a facility located at Bell and

Washington Townships, **Westmoreland County** to receiving waters named Beaver Run.

**NPDES Permit No. PA0020613.** Sewage, **Borough of Waynesburg**, 90 East High Street, Waynesburg, PA 15370 is authorized to discharge from a facility located at Waynesburg Wastewater Treatment Plant, Franklin Township, **Greene County** to receiving waters named Southfork Tenmile Creek.

**NPDES Permit No. PA0032247.** Sewage, **Pennsylvania Department of Conservation and Natural Resources, Bureau of Parks—Laurel Hill State Park**, R. D. 4, Box 130, Somerset, PA 15501-8501 is authorized to discharge from a facility located at Laurel Hill State Park Sewage Treatment Plant, Middle Creek Township, **Somerset County** to receiving waters named Laurel Hill Creek.

**NPDES Permit No. PA0217913.** Sewage, **Keystone Coal Mining Corporation**, P. O. Box 729, Indiana, PA 15701 is authorized to discharge from a facility located at Urling Mines 1 and 2, Urling Main Portal STP, Armstrong Township, **Indiana County** to receiving waters named Anthony Run.

**Permit No. 0297202, Amendment No. 1.** Industrial waste, **Department of Energy, Pittsburgh Naval Reactors Office**, P. O. Box 109, West Mifflin, PA 15122-1019. Construction of Research Development Lab located in West Mifflin Borough, **Allegheny County** to serve Bettis Atomic Lab/Sis System.

**Permit No. 6574208, Amendment No. 1.** Industrial waste, **Elliott Company**, North Fourth Street, Jeannette, PA 15644-0800. Construction of manufacturer of turbo machinery located in Jeannette, **Westmoreland County** to serve Jeannette Facility.

**Permit No. 0297414.** Sewerage, **Plum Borough Municipal Authority**, 4555 New Texas Road, Pittsburgh, PA 15239. Construction of equalization facility and intercept replacement located in Plum Borough, **Allegheny County** to serve Plum Creek Area/Unity.

**Permit No. 6598406.** Sewerage, **John Edward Schmidt**, Route 66 and Pfeffer Road, R. D. 2, Box 164A, Export, PA 15632. Construction of small flow sewage treatment plant located in Washington Township, **Westmoreland County** to serve Schmidt Office Building STP.

*Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.*

**NPDES Permit No. PA0222631.** Sewage, **Esther Allen**, 417 Chestnut St., Meadville, PA 16335 is authorized to discharge from a facility located in Oil Creek Township, **Venango County** to an Unnamed Tributary to Pine Creek.

**NPDES Permit No. PA0222569.** Sewage, **Robert R. Smith SFTF**, 10301 Lake Pleasant Road, Waterford, PA 16441 is authorized to discharge from a facility located in Greene Township, **Erie County** to an unnamed tributary to the East Branch of Leboeuf Creek.

**NPDES Permit No. PA0220876.** Sewage, **Country Greens**, 10043 Peach Street, Girard, PA 16417 is authorized to discharge from a facility located in Elk Creek Township, **Erie County** to the East Branch of Conneaut Creek.

**NPDES Permit No. PA0222658.** Sewage, **Stop-N-Go of Western Pennsylvania, Inc.**, 262 Connecticut Avenue, Rochester, PA 15074 is authorized to discharge from a facility located in Cranberry Township, **Butler County** to an unnamed tributary to Brush Creek.

**WQM Permit No. 6198403.** Sewerage, **Esther Allen, SRSTP**, 417 Chestnut St., Pleasantville, PA 16341. Construction of Esther Allen SRSTP located in Oil Creek Township, **Venango County**.

**WQM Permit No. 1098405.** Sewage, **Stop-N-Go of Western Pennsylvania, Inc.**, 262 Connecticut Avenue, Rochester, PA 15074. This project is for the construction and operation of a proposed wastewater treatment facility in Cranberry Township, **Butler County**.

#### INDIVIDUAL PERMITS (PAS)

**The following NPDES Individual Permits for discharges of stormwater from construction activities have been issued.**

*Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10S055-1	PA American Water Co. 20 E. Union St. Wilkes-Barre, PA 18701	Monroe Co. Coolbaugh Township and Mt. Pocono Borough	Forest Hills Run, Red Run, Yankee Run, and Tank Creek
PAS10U095	Isadore Colonna Michael Frick 825 Colonna Lane Nazareth, PA 18064	Northampton County Moore Township	Monocacy Creek
PAS10U096	James H. Seitz, II 2321 Silo Dr. Easton, PA 18040	Northampton County Bushkill Township	Bushkill Creek
PAS10U088	Northampton Community College 3835 Green Pond Rd. Bethlehem, PA 18020	Northampton County Bethlehem Township	Monocacy Creek
PAS10U097	Pektor Partners, L.P. 559 Main St., Suite 300 Bethlehem, PA 18018	Northampton County Williams Township	Frya Run

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS107415	Darryl Williams 409 Stockfarm Road Lake Ariel, PA 18436	Wayne County Salem Township	Tributary to Wallenpaupack Creek

**INDIVIDUAL PERMITS****(PAR)**

The following parties have submitted Notices of Intent (NOIs) for Coverage under (1) General NPDES Permit(s) to discharge wastewater into the surface waters of this Commonwealth. The approval for coverage under these general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in the general permit; (2) General Permit(s) for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in Pennsylvania. The approval of coverage for land application of sewage sludge or residential septage under these general permits is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective general permit. The Department of Environmental Protection approves the following coverages under the specified General Permit.

The EPA Region III Regional Administrator has waived the right to review or object to this permit action under the waiver provision: 40 CFR 123.24.

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted.

*List of NPDES and/or other  
General Permit Type*

PAG-1	General Permit For Discharges From Stripper Oil Well Facilities
PAG-2	General Permit For Discharges of Stormwater From Construction Activities
PAG-3	General Permit For Discharges of Stormwater From Industrial Activities
PAG-4	General Permit For Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit For Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit For Wet Weather Overflow Discharges From Combined Sewer Systems
PAG-7	General Permit For Beneficial Use of Exceptional Quality Sewage Sludge By Land Application
PAG-8	General Permit For Beneficial Use of Non-Exceptional Quality Sewage Sludge By Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-9	General Permit For Beneficial Use of Residential Septage By Land Application to Agricultural Land, Forest or a Land Reclamation Site

*General Permit Type—PAG-2*

*Facility Location*

<i>County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Lackawanna County Taylor Borough	PAR10N068	PA DEP Bureau of Abandoned Mine Reclamation 2 Public Square, 5th Floor Wilkes-Barre, PA 18711-0790	Keyser Creek	Lackawanna CD (717) 281-9495
Exeter Township Berks County	PAR-10-C234	Richard Puwalski, VP Surgical Specialties Corp. P. O. Box 310 Reading, PA 19607	Schuylkill River	Berks County CD P. O. Box 520 1238 County Welfare Rd. Leesport, PA 19533 (610) 372-4657
Silver Spring Township Cumberland County	PAR-10-H182	Developers Realty Inc. Kohls Department Store 10 Crossroads Plaza West Hartford, CT 06136	Trindle Spring Run	Cumberland County CD 43 Brookwood Ave. Suite 4 Carlisle, PA 17013 (717) 240-7812

*Facility Location  
County and  
Municipality*

*Permit No.*

*Applicant Name  
and Address*

*Receiving Stream  
or Body of Water*

*Contact Office and  
Telephone No.*

Lower Paxton Township Dauphin County	PAR-10-I165	Sourbeer & Paul 5500 Linglestown Road P. O. Box 6148 Harrisburg, PA 17112	Paxton Creek	Dauphin County CD 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Lower Paxton Township Dauphin County	PAR-10-I155	Holiday Retirement Corp. 2250 McGilchrist St. SE, Suite 200 Salem, OR 97302	Paxton Creek	Dauphin County CD 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Middle Paxton Township Dauphin County	PAR-10-I161	Baker Heavey Highway P. O. Box 397 Dauphin, PA 17018	Susquehanna River	Dauphin County CD 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Jefferson Township Dauphin County	PAR-10-I150	Joseph Conners 2731 Powells Valley Road Halifax, PA 17032	Powell Creek	Dauphin County CD 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
Rapho Township Lancaster County	PAR-10-O-327	Willow Valley Associates 100 Willow Valley Lakes Drive Lampeter, PA 17584	Chickies Creek	Lancaster County CD 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361
East Lampeter Township Lancaster County	PAR-10-O-334	East Lampeter Township 2205 Old Philadelphia Pike Lancaster, PA 17602	Mill Creek	Lancaster County CD 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361
East Hempfield Township Lancaster County	PAR-10-O-337	Somerton Springs Lanc. Golf Shop 480 Vincent Circle Worminster, PA 18974	UNT Chickies Creek	Lancaster County CD 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361
Leacock Township	PAR-10-O-338	J & E Dev. General Partnership 43 South Harvest View Road Bird In Hand, PA 17505	Muddy Run	Lancaster County CD 1383 Arcadia Road, Room 6 Lancaster, PA 17601 (717) 299-5361

*General Permit Type—PAG-3*

*Facility Location  
County and  
Municipality*

*Permit No.*

*Applicant Name  
and Address*

*Receiving Stream  
or Body of Water*

*Contact Office and  
Telephone No.*

Washington County Cecil Township	PAR206103	Clad Metals, Inc. All-Clad Metalcrafters, Inc. 424 Morganza Road Canonsburg, PA 15317	Chartiers Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Hempfield Township Mercer County	PAR808323	Trinity Industries, Inc. P. O. Box 568887 Dallas, TX 75356-8887	Erie Extension Canal	Northwest Region Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-4**Facility Location  
County and  
Municipality**Permit No.**Applicant Name  
and Address**Receiving Stream  
or Body of Water**Contact Office and  
Telephone No.*Huntingdon County  
Smithfield Township

PAG043599

Allen Betts, Jr.  
R. R. 1, Box 409A  
Huntingdon, PA 16652UNT to Juniata  
RiverSouthcentral Region  
909 Elmerton Avenue  
Harrisburg, PA 17110  
(717) 705-4700Columbia County  
Roaring Creek  
Township

PAG045965

Matthew D. Williams  
R. D. 1, Box 83  
Catawissa, PA 17820Unnamed tributary  
to Roaring CreekNorthcentral Region  
208 W. Third St.  
Williamsport, PA 17701  
(717) 327-3664Lycoming County  
Loyalsock Township

PAG045016

Timothy and Tammy Ulmer  
3978 Pleasant Valley Road  
Cogan Station, PA 17728Unnamed tributary  
to Mill CreekNorthcentral Region  
208 W. Third St.  
Williamsport, PA 17701  
(717) 327-3664*General Permit Type—PAG-5**Facility Location  
County and  
Municipality**Permit No.**Applicant Name  
and Address**Receiving Stream  
or Body of Water**Contact Office and  
Telephone No.*York County  
Penn Township

PAG053524

Leese's Amoco Service  
Ronald Leese  
702 York Street  
Hanover, PA 17331

UNT to Oil Creek

Southcentral Region  
909 Elmerton Avenue  
Harrisburg, PA  
17110-8200  
(717) 705-4707*General Permit Type—PAG-8**Facility Location  
County and  
Municipality**Permit No.**Applicant Name  
and Address**Receiving Stream  
or Body of Water**Contact Office and  
Telephone No.*South Londonderry  
Township  
Lebanon County

PAG-08-3520

South Londonderry  
Township  
Campbelltown West STP  
P. O. Box 3  
Campbelltown, PA  
17010-003SCRO  
909 Elmerton Avenue  
Harrisburg, PA  
17110-8200  
(717) 705-4707Bern Township  
Berks County

PAG-08-3522

County of Berks Welfare  
Tract STP  
1088 Berks Road  
Leesport, PA 19533SCRO  
909 Elmerton Avenue  
Harrisburg, PA  
17110-8200  
(717) 705-4707*General Permit Type—PAG-9**Facility Location  
County and  
Municipality**General  
Permit No.**Applicant Name  
and Address**Receiving Stream  
or Body of Water**Contact Office and  
Telephone No.*

Schuylkill County

PAG-09-2204

Sell's Septic Service  
945 Woodland Drive  
Walnutport, PA 18088Northeast Region Ofc.  
Water Management  
Program  
2 Public Square  
Wilkes-Barre, PA 18711**SEWAGE FACILITIES ACT  
PLAN APPROVAL**

The Department of Environmental Protection (Department) has taken actions on municipal requests for Act 537 Plan Approval.

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514), and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, State Office

Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

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**Actions under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20).**


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*Southeast Regional Office: Sewage Planning Specialist Supervisor, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

The Plan Approval is granted for a revision to the Official Sewage Facilities Plan of **Upper Dublin Township, Montgomery County**.

The plan provides for an update of the flow projections for the Upper Dublin Township Wastewater Treatment Plant. The new flow projections support the Township's proposal to expand the plant to 1.1 mgd, instead of the previously approved 1.0 mgd. This expansion will provide sufficient treatment capacity for the Township's 10-Year/Ultimate flow projections, based on current zoning, and prevent the need for further expansion of the facility in the near future.

The Plan Approval is granted for a revision to the Official Sewage Facilities Plan of **Warrington Township, Bucks County** to provide for:

1. The expansion of the Tradesville sewage treatment plant from a capacity of 260,000 gallons per day to a capacity of 330,000 gallons per day. Additional capacity will be utilized by the Central Bucks School District property, the Barness, Urwiler and Poley tracts, to be incorporated into Area #5, and the Smeland tract, which is to be incorporated into Area #3.

2. The construction of a 150 gpm pump station in the vicinity of Street and Folly Roads and approximately 4,750 feet of 4 inch diameter force main to serve the Poley and Barness tracts. Flows from these projects will be conveyed to the Warrington Hunt pump station.

3. The construction of a 150 gpm pump station in the vicinity of the tract boundaries separating the Urwiler tract and the Central Bucks School District property and approximately 7,800 feet of 4 inch diameter force main to serve these two developments.

## SAFE DRINKING WATER

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**Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**


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*Northeast Regional Office: Sanitarian Regional Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**Permit No. 5495504.** Public water supply. **Schuylkill County Municipal Authority**, c/o David Holley, General Manager, Schuylkill County Municipal Authority, 221 South Centre Street, Pottsville, PA 17901. This proposal involves an amendment to a public water supply no. 5490505 requesting an increase in the rated capacity of the Mount Laurel Water Treatment Plant from 0.8 mgd to 1.0 mgd. It is located in New Castle Township, **Schuylkill County**. *Permit to Construct:* August 17, 1998.

**Permit No. 6697502.** Public water supply. **Meshoppen Borough**, John Bunnell, President. P. O. Box 237, Meshoppen, PA 18630. This proposal involves the replacement of the existing 6 inch transmission main from Well 1 to the distribution system; replacement of the existing distribution system; and replacement of the existing concrete reservoir with a new 140,000 gallon storage tank. It is located in Meshoppen Borough, **Wyoming County**. *Permit to Construct:* August 19, 1998.

**Permit No. 3540012.** Public water supply. **Tamaqua Area Water Authority**, Donald Matalevage, Borough Manager, 320 East Broad Street, Tamaqua, PA 18252. This project provides for approval to change the corrosion inhibitor at the Still Creek Water Treatment Plant from Klenzoid, Klenphos 300, a pyrophosphate to Calgon C-9L, a zinc orthophosphate. It is located in Tamaqua Borough, **Schuylkill County**. *Permit to Operate:* August 21, 1998.

**Permit No. 2520054.** Public water supply. **Well No. 2—Pocono Ranchlands**, Kathleen Simoneic, Director of Operations, Pocono Ranchlands Property Owners Association, R. R. 1, Box PRL 80, Bushkill, PA 18324. This permit provides for the operation of facilities covered under Construction No. 5291503 issued by this office May 13, 1993. Permit No. 5291508 covered the modifications necessary to bring up to what is considered current standards and existing public water supply system serving approximately 40 EDUs in a property owners association. It is Lehman Township, **Pike County**. *Permit to Operate:* August 21, 1998.

**Minor Amendment. Schuylkill County Municipal Authority**, Schuylkill High Ridge Business Park Water Tank, 221 South Centre Street, Pottsville, PA 17901, David Holley. This minor amendment is for the construction of a 1.0 mg storage tank with associated piping, including 1,400 feet of 12 inch diameter ductile iron pipe to and from the tank to the distribution systems transmission line. *Permit to Operate:* August 27, 1998.

**Permit No. 3396399.** Permit-by-Rule, **North American Water Company**, 1100 Poydras Street, Suite 2602, New Orleans, LA 70129, John C. Calhoun, is approved to add one NAMA approved vending machine to its Permit-by-Rule No. 3396399. It is located at the Wegman's Store, 3900 Tillman, Allentown, PA. *Permit to Operate:* August 20, 1998.

*Regional Office: Northcentral Field Operations, Environmental Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.*

**Application No. M. A.** The Department issued a construction permit to **Clearfield County Municipal Services and Recreation Authority** (650 Leonard Street, P. O. Box 868; Middlecreek Township, **Snyder County**) for construction of an extension of the distribution system to serve approximately 20 homes in the Lyleville Area, construction of a new booster pump station and rehabilitation of Pump Station No. 1.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

**Under Act 2, 1995**

### Preamble 3

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**The following final reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

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Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of any final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documenta-

tion supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected.

For further information concerning the final report, contact the Environmental Cleanup Program in the Department's Regional Office under which the notice of receipt of a final report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final reports:

*Southeast Regional Office: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.*

**Elf Atochem North America, Inc.**, Upper Merion Township, **Montgomery County**. Mark Piazza, Senior Environmental Engineer, Elf Atochem North America, Inc., 2000 Market St., Philadelphia, PA 19103-3222, has submitted a Final Report concerning remediation of site soil and groundwater contaminated with PCBs, lead, heavy metals, pesticides, solvents, BTEX and polycyclic aromatic hydrocarbons. The report is intended to document remediation of the site to meet Statewide health standard and/or background standard.

*Southcentral Regional Office: Environmental Cleanup Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8802, (717) 705-4705.*

**Distribution Pole 20792S32110**, Mechanicsburg Borough, **Cumberland County**. **PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101-1179 has submitted a Final Report concerning remediation of site soils contaminated with PCBs. The report is intended to document remediation of the site to meet the Statewide health standard.

**Distribution Pole 24283S34328**, Harrisburg City, **Dauphin County**. **PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101-1179 has submitted a Final Report concerning remediation of site soils contaminated with PCBs. The report is intended to document remediation of the site to meet the Statewide health standard.

**Distribution Pole 26172S35238**, Lower Paxton Township, **Dauphin County**. **PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101-1179 has submitted a Final Report concerning remediation of site soils contaminated with PCBs. The report is intended to document remediation of the site to meet the Statewide health standard.

**Distribution Pole 26181S36799**, Lower Paxton Township, **Dauphin County**. **PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101-1179 has submitted a Final Report concerning remediation of site soils contaminated with PCBs. The report is intended to document remediation of the site to meet the Statewide health standard.

**Distribution Pole 28544S35576**, South Hanover Township, **Cumberland County**. **PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101-1179 has submitted a Final Report concerning remediation of site soils contaminated with PCBs. The report is intended to document remediation of the site to meet the Statewide health standard.

**Distribution Pole 25115S38029**, Middle Paxton Township, **Dauphin County**. **PP&L, Inc.**, Two North Ninth

Street, Allentown, PA 18101-1179 has submitted a Final Report concerning remediation of site soils contaminated with PCBs. The report is intended to document remediation of the site to meet the Statewide health standard.

**Distribution Pole 40141S26711**, Lancaster City, **Lancaster County**. **PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101-1179 has submitted a Final Report concerning remediation of site soils contaminated with PCBs. The report is intended to document remediation of the site to meet the Statewide health standard.

*Northcentral Regional Office: Michael C. Welch, Environmental Cleanup Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (717) 321-6525.*

**Distribution Pole No. 17026N38879**, Woodward Township, **Lycoming County**. **PP&L, Inc.**, Two North Ninth Street, Allentown, PA 18101 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with PCBs. The report is intended to document remediation of the site to meet the Statewide health standard.

*Northwest Regional Office: Craig Lobins, Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6648.*

**Mahoning Hardware and Implement Company**, Borough of Punxsutawney, **Jefferson County**. 116-120 Indiana Street has submitted a Final Report to remediate soil. The site has been found to be contaminated with BTEX. The report is intended to document remediation of the site to meet the Statewide health standard. A summary of the final report will be published in the *Punxsutawney Spirit*.

**GPU Energy (Parcel A., Grain Elevator Site)**, North of Holland Street, **Erie County**. City of Erie has submitted a Final Report to remediate soil. The site has been found to be contaminated with heavy metals. The report is intended to document remediation of the site to meet the site specific standard. A summary of the Final Report was reported to have been published in the *Erie Daily Times* on September 8, 1998.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 4

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908) and Chapter 250 Administration of Land Recycling Program.**

Provisions of 25 Pa. Code § 250.8 Administration of Land Recycling Program requires the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the Act 2 (Land Recycling and Environmental Remediation Standards Act) remediation standards. Plans and reports required by provisions of Act 2 for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of reuse of the



property, and in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. A cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program in the Department's Regional Office under which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has acted upon the following plans and reports:

*Southeast Regional Office: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.*

**Fenco Inc.—Melody Dry Cleaners**, Cheltenham Township, **Montgomery County**. Charlene R. Drake, React Environmental Services, Inc., 6901 Kingsessing Ave., Philadelphia, PA 19142, has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with solvents. The final report demonstrated attainment of site specific standards and was approved by the Department on September 11, 1998.

*Southcentral Regional Office: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.*

**Morris Residence**, Dover Township, **York County**. BL TETHYS LLC submitted a final report concerning the remediation of site soils contaminated with BTEX and PAHs. The final report demonstrated attainment of the Statewide health standard, and was approved by the Department on September 16, 1998.

## SOLID AND HAZARDOUS WASTE

### BENEFICIAL USE DETERMINATIONS

**Issued Determination of Applicability under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904) and residual waste regulations for a general permit to operate residual waste processing facilities and the beneficial use of residual waste other than coal ash.**

*Northwest Regional Office: Regional Solid Waste Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6848.*

**Permit No. WMGR038-NW001. Standard Tool & Machine Company**, 205 East Carson Street, Pittsburgh, PA 15219-1189. Permit No. WMGR038 was originated by

the Department for the beneficial use of waste tires and tire-derived material as a fuel at approved facilities, civil engineering or construction material and feedstock in the manufacturing of consumer products. The facility is located at 1 USS Industrial Park, Ellwood City, **Lawrence County**. Permit was issued September 14, 1998.

*Central Office: Division of Municipal and Residual Waste, 14th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101-2301.*

**General Permit No. WMGR052D001. Allegheny Power**, 800 Cabin Hill Drive, Greensburg, PA 15601-1689. A determination of applicability to operate under General Permit Number WMGR052 for the beneficial use of Low Permeability Cementitious (LPC) Material as construction material, in mine sealing, mine fire and subsidence control and for reclamation of abandoned mine sites. The determination of applicability was issued by Central Office on August 27, 1998.

The Borough of Jefferson opposed the determination of applicability and requested modification of General Permit Number WMGR052 to require approval by a majority vote of the elected officials of the community. The Department does not believe that modification is appropriate or necessary for inclusion in the general permit, since the general permit clearly does not override local ordinances and zoning.

### RESIDUAL WASTE PROCESSING FACILITIES

**Permit modification issued under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904) and the residual waste regulations for a general permit to operate residual waste processing facilities.**

*Central Office: Division of Municipal and Residual Waste, 14th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101-2301.*

**General Permit No. WMGR053. Private Recycling Services, Inc.**, R.D. 2, Box 250A-1, Cochran, PA 16314. A permit modification has been issued for the processing of off-specification or out-of-date consumer commodity-type materials in recyclable containers prior to beneficial use of the container materials. The requested revision allows the use of mixed batch waste from PPG Industries as a solidification/stabilization agent. Mixed batch waste is composed primarily of sand, soda ash, dolomite, limestone and glass cullet. The modification request was issued by Central Office on September 15, 1998.

### HAZARDOUS WASTE, TREATMENT, STORAGE AND DISPOSAL FACILITIES

**Permits modified under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003) and regulations to manage a hazardous waste treatment and disposal facility.**

*Southwest Regional Office: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**Permit ID No. PAD004344222. Bethlehem Steel Corporation**, Bethlehem, PA 18016. Closure and postclosure care of a hazardous waste landfill and hazardous waste land treatment and disposal area in East

Taylor Township, **Cambria County**. Permit modified in the Regional Office on September 15, 1998.

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Permits revoked under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003) and regulations to operate solid waste processing or disposal area or site.**

*Regional Office: Regional Solid Waste Manager, Suite 6010, Lee Park, 555 North Lane, Conshohocken, PA 19428.*

**Permit No. 400611. Crozer Chester Medical Center**, One Medical Boulevard, Upland, PA 19013-3995. This permit has been revoked because the facility is no longer using their infectious waste incinerator which is located in Upland Borough, **Delaware County**. Permit was revoked in the Southeast Regional Office on September 11, 1998.

### PREVIOUSLY UNPERMITTED CLASS OF SPECIAL HANDLING WASTE

#### INFECTIOUS OR CHEMOTHERAPEUTIC WASTE

**A Determination of Applicability issued under the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101—4000.1904) and the municipal waste regulations for a general permit for the processing of infectious and chemotherapeutic waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Municipal and Residual Waste, 14th Floor, Rachel Carson State Office Building, 400 Market St., Harrisburg, PA 17105-2301.*

**Determination of Applicability No. WMGI005D001. Wyeth Laboratories, Inc.**, One Great Valley Parkway, Malvern, PA 19355-1423A determination of applicability under General Permit Number WMGI005—Merck & Co., Inc. was issued to Wyeth Laboratories, Inc. for processing of infectious waste generated in the production and research and development of pharmaceuticals, using chemical and/or thermal inactivation. The determination of applicability was issued by Central Office on September 17, 1998.

## AIR QUALITY

### OPERATING PERMITS

**Operating Permits Minor Modification issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.*

**41-313-011B: Lonza, Inc.** (3500 Trenton Avenue, Williamsport, PA 17701-7926) on September 15, 1998, a minor operating permit modification was made to allow the use of a permitted source to produce a product variant (liquid Glydant Plus) in the City of Williamsport, **Lycoming County**.

## PLAN APPROVALS

**Plan Approvals issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Northeast Regional Office: Air Quality Program, Two Public Square, Wilkes-Barre, PA 17811-0790, (717) 826-2531.*

**35-320-001: Eureka Security Printing Co., Inc.** (P.O. Box 147, Jessup, PA 18434) issued September 8, 1998 for the construction of a printing operation in Jessup Borough, **Lackawanna County**.

**39-301-068A: Greenwood Cemetery Association** (2010 Chew Street, Allentown, PA 18104) issued September 11, 1998, for construction of a crematory incinerator in Allentown, **Lehigh County**.

**39-313-027E: B. Braun Medical, Inc.** (824 Twelfth Avenue, Bethlehem, PA 18018) issued September 8, 1998, for construction of an ETO Sterilizer in Allentown, **Lehigh County**.

**40-313-030C: KAMA Corp.** (600 Dietrich Avenue, Hazleton, PA 18201) issued September 4, 1998, for modification of the polymerization and extrusion plants in Hazleton, **Luzerne County**.

**40-318-038A: Comfort Designs, Inc.** (263 Schuyler Avenue, P.O. Box 3000, Kingston, PA 18704) issued September 11, 1998, for modification of the paint spray operations in Kingston Borough, **Luzerne County**.

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**21-310-025A: Hempt Brothers, Inc.** (205 Creek Road, Camp Hill, PA 17011) issued September 21, 1998, for construction of an impactor crusher controlled by wet suppression in Lower Allen Township, **Cumberland County**. This source is subject 40 CFR 60, Subpart OOO, Standards of Performance for New Stationary Sources.

**38-05011A: Plain N' Fancy Kitchens, Inc.** (P.O. Box 519, Schaefferstown, PA 17088) issued September 21, 1998, for installation of two spray booths controlled by a dry filter system in Heidelberg Township, **Lebanon County**.

**38-313-020A: Lebanon Chemical Corp.** (P.O. Box 180, Lebanon, PA 17042) issued September 21, 1998, for modification of a fertilizer drying system in South Lebanon Township, **Lebanon County**.

**67-02008A: York International Corp.** (P.O. Box 1592, York, PA 17405-1592) issued September 17, 1998, for construction of one paint spray booth at their Grantley Plant in Spring Garden Township, **York County**.

**Plan Approvals extensions issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**67-313-027: P.H. Glatfelter Co.** (228 South Main Street, Spring Grove, PA 17362) issued September 16, 1998, to authorize temporary operation of the precipitated calcium carbonate plant and PCC lime storage and

handling system, controlled by a fabric collector under this Plan Approval until January 15, 1999, in Spring Grove Borough, **York County**.

**REASONABLY AVAILABLE CONTROL  
TECHNOLOGY  
(RACT)**

**Administrative Amendment of Operating Permits issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations for an Operating Permit to comply with 25 Pa. Code § 127.450 for Reasonable Available Control Technology.**

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (717) 327-3637.*

**47-0002: Strick Corp.** (R. R. 8, Box 281, Danville, PA 17821-8386) on July 31, 1998, to include RACT determinations for a number of trivial volatile organic compound sources in Limestone Township, **Montour County**.

## MINING

### APPROVALS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 water quality certification. Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

*Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.*

#### *Coal Permits Issued*

**17930102. Sky Haven Coal, Inc.** (R. D. 1, Box 180, Penfield, PA 15849), renewal of an existing bituminous surface mine permit in Beccaria Township, **Clearfield County** affecting 164.1 acres, receiving streams: unnamed tributary to Cofinan Run and Cofinan Run to Clearfield Creek to the West Branch of the Susquehanna River. Application received July 24, 1998. Permit issued September 17, 1998.

*Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.*

**03890111R. Rosebud Mining Company** (R. D. 9, Box 379A, Kittanning, PA 16201). Renewal issued for continued reclamation of a bituminous surface mine located in Perry Township, **Armstrong County**, affecting 23.6 acres. Receiving streams: Valley Run and Binkerd Run to the Allegheny River. Application: received July 14, 1998. Renewal issued: September 16, 1998.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**40980102. Lombardo Brothers Development Co., Inc.** (22 Hale Street, Yatesville, PA 18640), commencement, operation and restoration of an anthracite surface

mine operation in Hughestown Borough, **Luzerne County** affecting 7.24 acres, receiving stream—none. Permit issued September 16, 1998.

*Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.*

#### *Small Noncoal Permits Issued*

**03982801. M & M Lime Co., Inc.** (R. D. 1, Box 257-M, Worthington, PA 16262). Permit issued for commencement, operation and reclamation of a small noncoal (industrial mineral—limestone) surface mining site in West Franklin Township, **Armstrong County**, affecting 7.0 acres. Receiving streams: Buffalo Creek to Allegheny River. Application received: July 30, 1998. Permit issued: September 16, 1998.

*Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.*

#### *Noncoal Permits Issued*

**26900304. Carbon Fuel Resources, Inc.** (P. O. Box 275, West Leisenring, PA 15489). Permit revised to relocate 3.0 acres of permit area, renew the NPDES permit, and mine within 100 feet of Coal Lick Run at a large noncoal surface mining site located in Georges and South Union Townships, **Fayette County**, affecting 27.5 acres. Receiving streams: Coal Lick Run. Application received: July 24, 1998. Revision/Renewal issued: September 16, 1998.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**7775SM10C4. Allentown Cement Company, Inc.** (P. O. Box 619, Blandon, PA 19510-0199), renewal of NPDES Permit No. PA0011789 in Maiden Creek Township, **Berks County**, receiving stream—Ontelaunee Creek. Renewal issued September 18, 1998.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

#### *General Small Noncoal Authorizations Granted*

**58980834. Charles H. Liebegott** (R. R. 1, Box 194A, Springville, PA 18844), commencement, operation and restoration of a bluestone quarry operation in Springville Township, **Susquehanna County** affecting 1.0 acres, receiving stream—none. Authorization granted September 17, 1998.

## ACTIONS TAKEN UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT ENCROACHMENTS

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval, and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a

different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

**Actions on applications filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402) and notice of final action for certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).** (Note: Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description).

*Southeast Regional Office: Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**E46-777.** Encroachment Permit. **Huntingdon Valley Christian Academy**, 1845 Byberry Road, Huntingdon Valley, PA 19006. To maintain and stabilize an existing fill, which was placed during previous recreational field construction, located in and along the 100-year floodway of the Southampton Creek. The site is located approximately 800 feet east of the intersection of Byberry Road and Pioneer Road (Hatboro, PA Quadrangle N: 6.2 inches; W: 10.2 inches) in Upper Moreland Township, **Montgomery County**. This permit was issued under section 105.13(e) "Small Projects."

**E15-547.** Encroachment Permit. **Tredyffrin Township**, 1100 Duportail Road, Berwyn, PA 19312. To remove an existing 16.5-foot single span bridge along Richards Road over Trout Creek (WWF) and to install and maintain a low flow stream crossing consisting of 16.5-foot wide, with approximately 4.5-foot underclearance, bridge for the center section and 12-foot by 2.7-foot side cells. Work also includes regrading and restoring the stream banks for approximately 185 feet downstream and 130 feet upstream. The regrading activities will not extend below the normal water surface elevation. This site is located approximately 800 feet southwest from the intersection of Gulph and Richards Roads (Valley Forge, PA Quadrangle N: 16.3 inches; W: 6.7 inches) in Tredyffrin Township, **Chester County**.

**E15-584.** Encroachment Permit. **Metromedia Fiber Network Services, Inc.**, One North Lexington Avenue, 4th Floor, White Plains, NY 10601. To install and maintain a fiber optics utility line consisting of four 1 1/4-inch HDPE interducts within a 5-inch PVC or steel pipe associated with the Metromedia Fiber Optic Network—Philadelphia Area Loop Project, which will extend from East Whiteland Township to Tredyffrin Township, **Chester County**. This utility line will be constructed along existing Conrail railroad right-of-way and will cross unnamed tributaries to the Little Valley Creek (EV) at the following locations: 1) (Malvern USGS Quadrangle N: 8.45 inches, W: 1.20 inches) in East Whiteland Township; 2) (Valley Forge USGS Quadrangle N: 8.95 inches, W: 17.30 inches) in Tredyffrin Township; 3) (Valley Forge USGS Quadrangle N: 9.20 inches, W: 16.50 inches) in Tredyffrin Township; 4) (Valley Forge USGS Quadrangle N: 9.45 inches, W: 15.70 inches) in Tredyffrin Township; 5) (Valley Forge USGS Quadrangle N: 9.65 inches, W: 14.40 inches) in Tredyffrin Township; 6) (Valley Forge

USGS Quadrangle N: 9.90 inches, W: 13.40 inches) in Tredyffrin Township. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E09-762.** Encroachment Permit. **Metromedia Fiber Network Services, Inc.**, One North Lexington Avenue, 4th Floor, White Plains, NY 10601. To install and maintain a fiber optics utility line crossing across the Pennsylvania Canal (a.k.a. Delaware Canal) associated with the Metromedia Fiber Network Project which extends from Jersey City, NJ to Crystal City, VA. The site is located at the point where the Pennsylvania Canal flows beneath the Conrail Railroad Bridge (Trenton West NJ-PA USGS Quadrangle N: 20.30 inches; W: 11.00 inches) in Yardley Borough, **Bucks County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E15-576.** Encroachment Permit. **David Harlan**, 4755 West Lincoln Highway, Parkesburg, PA 19365. To construct and maintain a low flow crossing consisting of steel reinforced timber decking, reinforced concrete abutments and roadway approach fill in and along an unnamed tributary to the West Branch Brandywine Creek (WWF-MF) to serve as a driveway crossing for a proposed single family residence. The bridge will be 14 feet wide and have a span of 30 feet and average underclearance of approximately 4.0 feet. The site is located approximately 600 feet south of the intersection of Brandywine Creek Road and Green Valley Road (Coatesville USGS Quadrangle N: 10.3 inches; W: 0.85 inch) in Newlin Township, **Chester County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E15-582.** Encroachment Permit. **Willistown Township**, 688 Sugartown Road, Malvern, PA 19355. To install and maintain a section of 30-inch HCMP storm sewer line, outfall structure with an associated 20 linear foot section of gabion wall and appurtenant riprap in the 100-year floodplain and floodway of an unnamed tributary to Crum Creek (HQ, CWF) located along and south of Paoli Pike (S. R. 2014) at a point 420 feet west of its intersection with Warren Avenue (Malvern, PA Quadrangle N: 4.55 inches; W: 1.15 inches) in Willistown Township, **Chester County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E46-794.** Encroachment Permit. **Upper Merion Municipal Utility Authority**, 175 West Valley Forge Road, King of Prussia, PA 19406. To construct and maintain a discharge structure in the Schuylkill River from the Trout Run Water Pollution Control Center (Valley Forge, PA Quadrangle N: 20.1 inches; W: 4.6 inches) in Upper Merion Township, **Montgomery County**. Work includes: 1) Construction of a 6-foot diameter precast discharge structure. Surrounded by rip-rap protection in the Schuylkill River. 2) Installation of a 36-inch diameter reinforced concrete treatment plant discharge pipe beneath the 100 year floodplain, the river bed of the Schuylkill River, and adjacent wetland. This work is located approximately 50 feet into the River from the shore line at a point approximately 120 feet upstream of the existing Catfish Dam lock structure, and along the southern bank of the River. This structure will replace a sanitary sewer plant outfall structure located in Trout Run. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

*Northeast Regional Office: Regional Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-5485.*

**E45-350.** Encroachment. **Skytop Lodges, Inc.**, One Skytop, Skytop, PA 18357. To construct and maintain a 15-inch PVC water intake structure and a 15-inch CPP outfall pipe and associated riprap apron in Skytop Lower Lake for the purpose of constructing an irrigation pumping station for Skytop Golf Course. The project is located 1 mile south of the intersection of S.R. 0390 and Township Road T587 (Skytop, PA Quadrangle N: 17.9 inches; W: 15.3 inches) in Barrett Township, **Monroe County**.

**E45-356.** Encroachment. **The Nature Conservancy**, 1100 Hector Street, Suite 470, Lee Park, Conshohocken, PA 19428. To place fill in a de minimis area of wetlands equal to 0.02 acre for the purpose of constructing a raised, stone walkway having a length of 215 feet and width of 5 feet to provide access to the existing Tannersville Cranberry Bog Nature Trail System. The project is located on the east side of S.R. 1001 (Cherry Lane), approximately 0.6 mile south of Township Road T509 (Mount Pocono, PA Quadrangle N: 7.4 inches; W: 2.6 inches) in Pocono Township, **Monroe County**.

*Northcentral Regional Office: Water Management—Soils and Waterways, F. Alan Sever, Chief, 208 West Third St., Williamsport, PA 17701.*

**E14-326.** Encroachment. **Pa. Dept. of Transportation**, 1924-30 Daisy St., Clearfield, PA 16830. To construct and maintain a 4 span steel multi-girder bridge with a total span of 882 feet and minimum underclearance of 101 feet across Logan Branch of Spring Creek for SR 0026 Section C05 located above SR 0144 approximately 1.25 miles south of the village of Axemann (Bellefonte, PA Quadrangle N: 0.69 inch; W: 1.88 inches) in Spring Township, **Centre County**.

**E18-259.** Encroachment. **Green Township Supervisors**, Logantown, PA 17747. To maintain an existing single span box beam bridge with a structural length of 44 feet and a width of approximately 16 feet and 10 foot underclearance with a reinforced concrete deck with an asphalt wearing surface over Fishing Creek and to maintain gravel and debris removal upstream and downstream of the bridge approximately 50 feet in each direction. The project is located on T-350 (Stover Road) approximately 1/2 mile south of the intersection of T-350 with RT 880 (Logantown, PA Quadrangle N: 3.6 inches; W: 12.1 inches) in Green Township, **Clinton County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E18-260.** Encroachment. **Green Township Supervisors**, Logantown, PA 17747. To maintain an existing single span box beam bridge with a structural length of 38 feet, a clear span of 36 feet and a 15 foot underclearance with a bituminous wearing deck over Fishing Creek and to maintain gravel and debris removal upstream and downstream approximately 50 feet in each direction of the bridge. The project is located on T-352 (Snook Road) approximately 1/2 mile south of the intersection of T-352 and Rt. 880 (Logantown, PA Quadrangle N: 1.5 inches; W: 6.8 inches) in Green Township, **Clinton County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

*Northwest Regional Office: Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**E10-282.** Encroachment. **Penreco**, 138 Petrolia Street, Karns City, PA 16041-9299. To remove two existing aerial pipelines near Tanks Nos. 65 and 179 and to modify and maintain existing aerial pipelines and support structure near Tank No. 138 across South Branch Bear Creek at the Barrel House Area within the existing Karns City Penreco refinery (Chicora, PA Quadrangle N: 22.3 inches; W: 13.8 inches) in Karns City Borough, **Butler County**.

**E43-268.** Encroachment. **Mercer County**, 503 Mercer County Courthouse, Mercer, PA 16137. To replace the existing superstructure and to rehabilitate and maintain County Bridge No. 712 having a clear span of 21.89 feet and an average underclearance of 8 feet on a 66 degree skew across Booth Run on T-320 (South Barry Road) approximately 0.75 mile south of S.R. 0358 (Kinsman, PA-OH Quadrangle N: 1.0 inch; W: 0.2 inch) in West Salem Township, **Mercer County**.

**E43-269.** Encroachment. **Mercer County**, 503 Mercer County Courthouse, Mercer, PA 16137. To replace the existing superstructure and to rehabilitate and maintain County Bridge No. 3109 having a clear span of 32.15 feet and an average underclearance of 6.25 feet on a 54 degree skew across a tributary to Wolf Creek on T-888 (Tieline Road) approximately 0.75 mile north of S.R. 0208 (Grove City, PA Quadrangle N: 11.0 inches; W: 5.5 inches) in Pine Township, **Mercer County**.

*Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E63-454.** Encroachment. **Tyrol Development Company, LLC**, 100 Wood Street Building, Pittsburgh, PA 15222. To construct and maintain dual 7 feet diameter fully paved CMP culverts, one culvert will be depressed 1 foot below the constructed streambed elevation, and to relocate and maintain approximately 660 feet of a tributary to Little Chartiers Creek (HQ-WWF) for the purpose of constructing a commercial complex. The project is located on the south side of S.R. 0019 southwest of its intersection with Locust Street (Canonsburg, PA Quadrangle N: 0.8 inch; W: 5.3 inches) in North Strabane Township, **Washington County**.

**E02-1219.** Encroachment. **Pennsylvania Turnpike Commission**, P. O. Box 67676, Harrisburg, PA 17106-7676. To remove the existing structures; to widen and maintain a prestressed concrete box beam bridge having a single span of 87.5 feet and an underclearance of 11.0 feet over Peters Creek (TSF); to construct and maintain a 375.0 foot long soldier beam wall in Lewis Run (TSF); to construct and maintain a dual cell, (2) 15.0 feet × 7.3 feet box culvert (depressed 10.0 inches) in Lewis Run; to construct and maintain a reinforced concrete 28.0 feet × 8.5 feet box culvert (depressed 12.0 inches) in Lewis Run; to widen and maintain a concrete T-beam bridge having a single span of 24.0 feet and an underclearance of 7.7 feet over Lewis Run; to extend and maintain a reinforced concrete 20.0 feet × 10.5 feet arch culvert from 120.0 feet to 135.0 feet in Lewis Run; to extend and maintain a reinforced concrete 20.0 feet × 10.5 feet arch culvert from 110.0 feet to 112.0 feet in Lewis Run; to construct and maintain a precast concrete 20.9 feet × 6.9 feet arch culvert having a total length of 40.0 feet in Lewis Run; to construct and maintain a 970 foot long soldier beam wall in Lewis Run; to construct and maintain a reinforced concrete 23.0 feet × 7.5 feet box culvert (depressed 12.0 inches) and having a length of 97.0 feet in Lewis Run; to construct and maintain a 48 inch reinforced concrete culvert having a length of 80.0 feet in a tributary to Lewis Run; to widen and maintain a prestressed box beam bridge having a single span of 26.0 feet and an

underclearance of 8.0 feet in Lewis Run; to extend and maintain a reinforced concrete 18.0 feet  $\times$  8.4 feet arch culvert from 90.0 feet to 95.0 feet in a tributary to Lewis Run; to relocate and maintain 845.0 linear feet of Lewis Run; to construct and maintain 2,932 linear feet of rock bank stabilization in Lewis Run and 50.0 linear feet of rock stabilization in a tributary to Lewis Run, to grade and stabilize the hillside behind the Blue Flame, maintain a gabion wall along the left bank of Lewis Run for a distance of approximately 360 feet; to extend and maintain a 4 feet  $\times$  4 feet R. C. box culvert from 64 feet to 81.5 feet in a tributary to Lewis Run, the construction of a 42 inch RCCP culvert having a length of 82 feet in a tributary to Lewis Run; to place and maintain fill in 0.01 acre of palustrine emergent wetlands for the purpose of widening and improving 2.28 miles of S.R. 0051 in conjunction with the construction of the Mon/Fayette Expressway project (S.R. 0043) Construction Section 52M. The project is located along S.R. 0051 from the Village of Large extending northward 2.28 miles to a point approximately 1,000 feet north of Coal Valley Road (project starts at Glassport, PA Quadrangle N: 7.5 inches; W: 9.0 inches) in Jefferson Borough, **Allegheny County**. The applicant has constructed replacement wetlands under the authorization of Permit No. E02-1132. The permit applicant has met the wetland replacement requirement by participating in the Pennsylvania Wetland Replacement Project.

## WATER ALLOCATIONS

**Actions taken on applications filed under the act of June 24, 1939 (P. L. 842, No. 365) (32 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth.**

*Southeast Regional Office: Bureau of Water Supply Management, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.*

**WA 46-1001.** Water allocation. **Evansburg Water Company**, 385 Bridge Street, Collegeville, PA 19426 has been granted the right to purchase 60,000 gallons per day, based on a 30-day average, from the Pennsylvania-American Water Company in Lower Providence Township, **Montgomery County**. *Type of Facility:* Water Allocation; *Permit Issued:* September 2, 1998.

## SPECIAL NOTICES

### Planning Grant Awards Under the Municipal Waste Planning, Recycling and Waste Reduction Act of 1988, Act 101

The Department of Environmental Protection (Department) hereby announces the following grants to counties under the Municipal Waste Planning, Recycling and Waste Reduction Act (Act 101) (53 P. S. §§ 4000.101—4000.1904). The awards are based upon applications received by the Department in 1997 and 1998.

Planning grants are awarded to counties for 80% of approved costs for preparing municipal waste management plans as required by Act 101, for carrying out related studies, surveys, investigations, inquiries, research and analysis, including those related to siting and for environmental mediation. Grants may be awarded for feasibility studies and project development for municipal waste processing or disposal facilities, except for facilities for the combustion of municipal waste that are not proposed to be operated for the recovery of energy. All grant awards are predicated on the receipt of recycling fees required by sections 701 and 702 of Act 101, and the availability of monies in the Recycling Fund.

Inquiries regarding the grant offerings should be directed to Sally Lohman, Planning Section, Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Waste Minimization and Planning, P. O. Box 8472, Harrisburg, PA 17105-8472.

### Act 101 Section 901 Planning Grants

<i>County</i>	<i>Activities</i>	<i>DEP Grant</i>
<i>Southcentral Region</i>		
Adams County	Develop advertise and distribute RFP addenda, and consider the responses. Develop an environmental assessment on the chosen composting site and hold public meetings. This grant includes the return of \$12,060 previously approved for work included in this grant instead.	\$145,255
Berks County	Household Hazardous Waste Education	\$ 2,835
Dauphin County	Household Hazardous Waste Education	\$ 16,935
Lancaster County	Revise the Lancaster County Municipal Waste Management Plan	\$ 46,066
<i>Northcentral Region</i>		
Northumberland County	Revise the Northumberland County Municipal Waste Management Plan	\$ 37,948
<i>Southwest Region</i>		
Greene County	Revise the Greene County Municipal Waste Management Plan	\$ 2,000
<i>Northwest Region</i>		
Lawrence County	Revise the Lawrence County Municipal Waste Management Plan	\$ 48,698
Crawford County	Revise the Crawford County Municipal Waste Management Plan	\$ 28,000
TOTAL		\$310,802

[Pa.B. Doc. No. 98-1612. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Availability of Technical Guidance

Technical Guidance Documents are on DEP's World Wide Web site (<http://www.dep.state.pa.us>) at the Public Participation Center. The "July 1998 Inventory" heading is the Governor's List of Non-regulatory Documents. The "Search the Inventory of Technical Guidance Documents" heading is a database of the Inventory. The "Final Documents" heading is the link to a menu of the various DEP bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to DEP's draft technical guidance documents.

DEP will continue to revise its documents, as necessary, throughout 1998.

#### *Ordering Paper Copies of DEP Technical Guidance*

Persons can order a bound paper copy of the latest Inventory or an unbound paper copy of any of the final documents listed on the Inventory by calling DEP at (717) 783-8727.

In addition, bound copies of some of DEP's documents are available as DEP publications. Persons should check with the appropriate bureau for more information about the availability of a particular document as a publication.

#### *Changes to Technical Guidance Documents*

Here is the current list of recent changes. Persons who have any questions or comments about a particular document should call the contact person whose name and phone number is listed with each document. Persons who have questions or comments in general should call Joe Sieber at (717) 783-8727.

#### *Final Technical Guidance*

DEP ID: 293-2400-001 Title: Conducting Radiological Performance Assessments for LLRW Disposal in Pennsylvania Description: This guidance document addresses radiation exposures that the public could receive from accidental or otherwise unintended releases of radioactive contaminants during and following LLRW disposal facility operations. Page Length: 45 Location: Volume 4 Tab 09 Effective Date: July 1998 Contact: Ken Singh at (717) 787-2163.

DEP ID: 293-2400-002 Title: Using Engineered Structures to Provide Enhanced Containment Description: This guidance document addresses the engineered, man-made structures used for containment. In addition, it provides for state-of-the-art barriers that would provide additional or enhanced containment for radioactive waste; resistance to water intrusion; prevention of radioactive releases; and provide structural stability to the waste disposal units and the facility. Page Length: 58 Location: Volume 4 Tab 10 Effective Date: July, 1998 Contact: Ken Singh at (717) 787-2163.

#### *Draft Technical Guidance*

DEP ID: 393-4180-003 Title: Strategy for Addressing the 1998 Federal and State Deadline for Upgrading Existing Underground Storage Tanks Description: This strategy outlines key program activities, which will be initiated prior to December 22, 1998 and also after this deadline is passed. Deadline for Submittal of Comments: November 3, 1998 Contact: Glenn Rider at (717) 772-5806.

#### *Technical Guidance—Notice of Intent to Rescind*

DEP ID: 563-3900-404 Title: Interim Implementation of Act 54 Description: Act 54 amended Pennsylvania's 1966 subsidence law. Its provisions were self-implementing.

The act included many undefined terms and made no provisions for phasing in the new requirements. Technical guidance 563-3900-404 explained the manner in which the Department would carry out the provisions of the act until it developed final regulations to clarify terms and requirements. Since final regulations have been developed by the Department and approved by the Environmental Quality Board, this guidance is no longer necessary. Effective Date: June 13, 1998. Contact: Harold Miller at (717) 783-8845.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 98-1613. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Citizens and Technical Advisory Committee Meeting

The Citizen and Technical Advisory Committees for Source Water Assessment and Protection are holding a special joint meeting on October 13, 1998, from 9:30 a.m. to 3 p.m. in the First Floor Conference Room (Room 105) of the Rachel Carson State Office Building. The purpose of the meeting is to review and comment on the Department's proposed Source Water Assessment and Protection Plan for the assessment of all sources of public drinking water under the Safe Drinking Water Act.

Anyone wishing to attend the meeting or who has questions regarding the meeting should contact Donna L. Green, Bureau of Water Supply Management at (717) 787-0122 or e-mail at [Green.Donna@a1.dep.state.pa.us](mailto:Green.Donna@a1.dep.state.pa.us). This notice, an agenda for each meeting, and notices of meeting changes will be available through the Public Participation Center on DEP's World Wide Web site at <http://www.dep.state.pa.us>.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Donna L. Green directly at (717) 787-0122 or through the Pennsylvania AT&T Relay Service at 1 (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 98-1614. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Public Informational Meetings on Draft Pennsylvania's Nonpoint Source (NPS) Management Program 1998 Update; Unified Watershed Assessment; Watershed Restoration Assistance Program

By this notice, the Department of Environmental Protection (Department), Bureau of Watershed Conservation is requesting public comments and suggestions on the Unified Watershed Assessment and the draft Pennsylvania Nonpoint Source (NPS) Management Program 1998 Update. The Department will hold six public meetings to provide information and an opportunity for public comment on: the Draft Pennsylvania's Nonpoint Source (NPS) Management Program 1998 Update; the Unified Watershed Assessment; and the Watershed Restoration Assistance Program. No formal record of questions or comments will be kept at these meetings. The meetings will be held as follows:



<i>Date</i>	<i>Time</i>	<i>Location</i>
October 13, 1998	7 p.m.	DEP Northwest Regional Office 230 Chestnut Street Meadville, PA
October 15, 1998	7 p.m.	Four Points Hotel (hilltop opposite Westmoreland Mall) 100 Sheraton Drive, off Route 30 Greensburg, PA
October 21, 1998	6 p.m.	DEP Southeast Regional Office Lee Park, 555 North Lane Conshohocken, PA
October 27, 1998	7 p.m.	DEP Northeast Regional Office Two Public Square Wilkes Barre, PA
October 28, 1998	7 p.m.	DEP Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA
October 29, 1998	7 p.m.	DEP Northcentral Regional Office 208 North Third Street Williamsport, PA

- *Unified Watershed Assessment*

The Commonwealth is coordinating efforts between State environmental agencies and USDA and other agencies to create a unified watershed assessment by October 1998 to identify watersheds needing restoration (Category I), watershed needing preventive action to sustain water quality (Category II), pristine or sensitive watersheds on Federal or State lands (Category III) and watersheds with insufficient data to make an assessment (Category IV) see *Pennsylvania Bulletin* Notice dated August 15, 1998.

The Commonwealth will focus on identifying priority watersheds in all four categories. Our priority setting process will consider all available information presented with emphasis on extent of impairment, agency support and local interest and participation. The public participation process will provide an opportunity to consider public comments and recommendations and additional priority setting methods and data.

- *Watershed Restoration Assistance Program*

The purpose of the grants program during 1998 is mainly to address nonpoint source pollution issues on a watershed basis and to demonstrate effective techniques for achieving program goals and objectives. With this in mind, the WRAP Grants have an overall goal of providing funds for locally managed watershed planning as well as remediation and protection activities. They will also provide incentives and support for communities undertaking these efforts in Pennsylvania watersheds.

- *Nonpoint Source Management Program 1998 Update*

The Pennsylvania Nonpoint Source (NPS) Management Program 1998 Update (the 1998 Update) outlines the Commonwealth's projected plan to address nonpoint source pollution over the next 4 years and beyond. This upgrades Pennsylvania's Nonpoint Source Management Program approved by the EPA in 1992 in compliance with section 319(b) of the Federal Water Pollution Control Act (Clean Water Act) as amended by P. L. 100-4 on February

4, 1987. As specified in the Clean Water Action Plan, beginning in FY2000, new incremental funds for nonpoint source pollution will be awarded only to states with EPA-approved upgraded management plans that are consistent with the EPA's nine key elements for an effective nonpoint source management program.

Pennsylvania's NPS Management Program incorporates the EPA's nine key elements in a comprehensive State-wide plan to control, prevent and remediate nonpoint sources of polluted runoff. Point source pollution or pollution that comes out of a pipe is regulated by permits. Nonpoint source pollution or "polluted runoff" washes off parking lots, fields and other surfaces into our streams. The 303(d) List of Impaired Waters indicates that abandoned mine drainage and agricultural runoff are the two leading sources of nonpoint source pollution in this Commonwealth. Other sources of polluted runoff that have been identified in this Commonwealth and have been approved by the EPA as eligible for 319 funding include: construction/urban runoff, hydrologic and habitat modifications, land disposal (onlot wastewater systems) and silviculture.

In 1997 the Commonwealth developed an NPS Strategy with specific goals to establish flexible, targeted and iterative approaches to achieve and maintain beneficial uses of the waters of the Commonwealth. This plan includes a mix of water quality based and technology based programs and a mix of regulatory, nonregulatory, financial and technical assistance programs needed to achieve and maintain beneficial uses of surface and groundwater as expeditiously as possible. These programs are further explained in this 1998 Update to the NPS Management Program.

The 1998 Update follows Pennsylvania's 1992 NPS Management Program in its structure. Section I outlines broad-based institutionalized Statewide programs which address specific nonpoint pollution categories. Section II describes Pennsylvania's NPS assessment and monitoring including information on the Commonwealth's three National monitoring projects. Section III covers specific programs which address nonpoint source pollution at a watershed level. Section IV is an overview of the Commonwealth's consistency with the EPA's nine key elements of an effective NPS program, including funding, Federal consistency and public participation. Section V contains the Commonwealth's strategy for program implementation which includes environmental measures and indicators of progress and success and the action plans to address NPS challenges by category.

The updating process began with a survey questionnaire and the 1995 Statewide NPS Conference "Local Solutions to Pennsylvania's Pollution." In 1997, the NPS Liaison Workgroup was convened to provide input into Pennsylvania's NPS Management Program. A 45-day public comment period will begin on October 3 and close on November 16, 1998. The Department invites comments from all interested and affected parties, including State, Federal and local agencies; the business community; not-for-profit and environmental organizations; and individuals. The comments and suggestions generated through this public review process will be carefully considered in finalizing program revisions and utilized to strengthen its effectiveness and viability. The draft Pennsylvania Nonpoint Source (NPS) Management Program 1998 Update is available on the Department web site at <http://www.dep.state.pa.us> (choose Subjects/Water Management/Bureau of Watershed Conservation/Nonpoint Source Management). To obtain a hard copy, call the Division of Watershed Support at (717) 787-5259 or write to Michael



D. Sherman, Chief, Division of Watershed Support, P. O. Box 8555, Harrisburg, PA 17105-8555. TDD users may contact Michael Sherman through the Pennsylvania Relay Service (800) 654-5984. Persons interested in submitting written comments on the draft of the 1998 Update should send the comments to Michael Sherman at the above address by the close of business on November 16, 1998. Comments may also be submitted electronically by November 16, 1998 to Michael Sherman in care of Glenda Ferree at ferree.glenda@a1.dep.state.pa.us.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 98-1615. Filed for public inspection October 2, 1998, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Application of Doylestown Hospital for Exception to 28 Pa. Code § 138.15

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) hereby gives notice that Doylestown Hospital has requested an exception to the requirements of 28 Pa. Code § 138.15 that a hospital may provide high-risk cardiac catheterizations, including percutaneous transluminal cardiac angioplasties (PTCA), only if it has an open heart surgical program on site.

Doylestown Hospital specifically requests an exception to perform primary angioplasties on patients who have experienced acute myocardial infarctions and claims evidence supports the performance of these types of angioplasties in hospitals without open heart surgical programs on site.

The request is on file with the Department. Persons may receive a copy of request for exception by requesting a copy from: Director, Division of Acute and Ambulatory Care, Pennsylvania Department of Health, Room 532 Health and Welfare Building, Harrisburg, PA 17120, Telephone: (717) 783-8980, FAX Number: (717) 772-2163, E-mail Address: lvia@health.state.pa.us.

Those persons who wish to comment on this exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aide service or other accommodation to do so, should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980.

V/TT: (717) 783-6514 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at 1 (800) 654-5984[TT].

DANIEL F. HOFFMANN,  
*Secretary*

[Pa.B. Doc. No. 98-1616. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Reporting Requirements for Open Heart Surgery and Cardiac Catheterization

On June 6, 1998, the Department of Health (Department) amended its hospital licensure regulations. Two of these regulations require hospitals to collect information and file reports with the Department.

Regulation 28 Pa. Code § 136.21 (relating to quality management and improvement) requires those hospitals which perform open heart surgery to maintain patient data on the following indicators: 1) mortality/morbidity; 2) infections and complications; 3) patient risk factors and 4) volume of procedures performed. The regulation requires the hospitals to provide the information to the Department on a quarterly basis.

Similarly, 28 Pa. Code § 138.20 (relating to quality management and improvement) requires those hospitals which provide cardiac catheterization services to maintain patient data on the same indicators, and to provide this information to the Department through the Pennsylvania Cardiac Catheterization Report.

In an effort to reduce duplication and promote efficiency in the collection of these data, the Department has consulted with the Health Care Cost Containment Council (Council). The Council is authorized to collect and analyze data and information on both the cost and quality of health care services.

The Department has determined that hospitals can fulfill the regulatory requirements under 28 Pa. Code §§ 136.21 and 138.20 by providing the information specified in those regulations to the Council through their quarterly data reporting process. The information which is provided must include the Council's complete UB92 and Atlas severity information for all open heart surgery procedures and all cardiac catheterization procedures performed on an inpatient basis, and UB92 information for all cardiac catheterizations performed on an outpatient basis. The Council has apprised the Department that it will provide this information in quarterly reports to the Department for its use. Further clarification may be forthcoming from the Department in conjunction with the Council.

Additionally, hospitals which were approved to perform cardiac catheterization under the former Certificate of Need program since 1991 have been filing reports with the Department on each cardiac catheterization performed in the hospital. Effective immediately, those hospitals will be meeting their reporting obligations under 28 Pa. Code § 138.20 by filing the reports required by the Council, and should cease the filing of the cardiac catheterization reports with the Department.

V/TT: (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Services at (800) 654-5984 [TT].

DANIEL F. HOFFMANN,  
*Secretary*

[Pa.B. Doc. No. 98-1617. Filed for public inspection October 2, 1998, 9:00 a.m.]

## DEPARTMENT OF LABOR AND INDUSTRY

### Current Prevailing Wage Act Debarments

The contractors referenced as follows have been determined to have intentionally violated the Pennsylvania Prevailing Wage Act (act) (43 P. S. §§ 165-11—165-17). This notice is published for the information and convenience of public bodies subject to the act. Under section 11(e) of the act (43 P. S. § 165-11(e)), these firms or these persons, or any firms, corporations or partnerships in which the firms or persons have an interest, shall be awarded no contract for 3 years after the date listed.

<i>Contractor</i>	<i>Address</i>	<i>Date of Debarment</i>
Irwin Pearlman, a/k/a Irv Pearlman, individually, and d/b/a Pearlman Demolition (Fed. ER Tax I.D. No. 25-1593522)	5841 Morrowfield Ave. Pittsburgh, PA 15217	08/17/98
Spadafora Corporation and Paul Spadafora (Fed. ER Tax I.D. Nos. 25-16444399 -and- 25-1231136)	4073 Route 8 Allison Park, PA 15101	08/17/98
Marker & Son, Ltd., and Thomas Marker (Fed. ER Tax I.D. No. 23-2706523)	3273 Gun Club Road Nazareth, PA 18064 -and/or- 251 Lynnwood Road Wind Gap, PA 18091	08/26/98
David Butters, d/b/a DMB Architectural Hardware (Fed. ER Tax I.D. No. 23-2404815)	513 Cemetery Street Williamsport, PA 17701 -and/or- 123 Aberdeen Road Williamsport, PA 17701	08/27/98

JOHNNY J. BUTLER,  
*Secretary*

[Pa.B. Doc. No. 98-1618. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Pennsylvania Conservation Corps; Grants for Projects

Grants for projects related to conservation, recreation, historical preservation, graffiti removal and the repair of institutional vandalism are available under the Pennsylvania Conservation Corps (PCC) program.

Agencies eligible to apply for PCC projects are:

- The Departments of Labor & Industry, Conservation & Natural Resources, Public Welfare, Corrections, Military & Veterans Affairs, Aging, Education and Community & Economic Development
- The Pennsylvania Game, Fish & Boat and Historical & Museum Commissions

- The Pennsylvania Emergency Management Agency
- Local political subdivisions (municipalities and school districts)
- Nonprofit agencies in cities of the first class (for projects involving the removal of graffiti and the repair of institutional vandalism only)

The PCC program is designed to provide work experience and educational opportunities to unemployed young adults as they undertake needed projects on Pennsylvania's public lands. Funds available through the program may be used to purchase approved construction materials and contracted services (political subdivisions must provide a 25% cash match). The wages of corpsmembers and crewleaders are paid directly by the Department of Labor and Industry.

Applications for PCC projects will be accepted from political subdivisions and eligible nonprofits through Friday, January 8, 1999. State agency applications will be accepted through Friday, February 5, 1999.

For more information, or to obtain an application and procedures manual, contact: Pennsylvania Conservation Corps, 1304 Labor & Industry Building, Seventh and Forster Streets, Harrisburg, PA 17120, (717) 783-6385.

JOHNNY J. BUTLER,  
*Secretary*

[Pa.B. Doc. No. 98-1619. Filed for public inspection October 2, 1998, 9:00 a.m.]

## ENVIRONMENTAL HEARING BOARD

### Whitemarsh Disposal Corporation v. DEP; EHB Doc. No. 98-169-MG

Whitemarsh Disposal Corporation has appealed the denial by the Department of Environmental Protection of an NPDES permit for a facility in Whitemarsh Township, Montgomery County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, and may be reviewed by any interested party on request during normal business hours. If information concerning this notice is required in an alternative form, please contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the AT&T Pennsylvania Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.62. Copies of the Board's rules of practice and procedure are available upon request from the Board.

GEORGE J. MILLER,  
*Chairperson*

[Pa.B. Doc. No. 98-1620. Filed for public inspection October 2, 1998, 9:00 a.m.]

# FISH AND BOAT COMMISSION

## Triploid Grass Carp Permit Applications

Under 58 Pa. Code § 71.7, the Fish and Boat Commission (Commission) may issue permits to stock triploid grass carp in Commonwealth waters. Triploid grass carp are sterile fish that may, in appropriate circumstances, help control aquatic vegetation. The Commission has determined consistent with 58 Pa. Code § 71.7(e)(3) to

seek public input with respect to any proposed stockings of triploid grass carp in waters having a surface area of more than 5 acres. Interested persons are invited to submit written comments, objections or suggestions about the notice to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 10 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

The following applications to stock triploid grass carp in waters having a surface area of more than 5 acres are currently undergoing staff review:

<i>Applicant</i>	<i>Water</i>	<i>Location of Water</i>	<i>Description of Water</i>	<i>Nature of Vegetation to be Controlled</i>
Richard Taylor	Highland Lake	Warren Twp., Bradford Co.	28 acre impoundment on Southwick Creek a tributary to Gaylord Creek	Hydrilla verticillata

PETER A. COLANGELO,  
*Executive Director*

[Pa.B. Doc. No. 98-1621. Filed for public inspection October 2, 1998, 9:00 a.m.]

# INDEPENDENT REGULATORY REVIEW COMMISSION

## Action Taken by the Commission

The Independent Regulatory Review Commission met publicly at 11:30 a.m., Thursday, June 18, 1998, and took the following action:

### *Regulation Disapproved:*

#1914 Pennsylvania Public Utility Commission #57-190: Advanced Meter Deployment for Electricity (amends 52 Pa. Code Chapter 57).

*Commissioners Present:* John R. McGinley, Jr., Chairperson; Alvin C. Bush, Vice Chairperson; Arthur Cocodrilli; Robert J. Harbison, III; John F. Mizner

Public Meeting held  
June 18, 1998

*Pennsylvania Public Utility Commission—Advanced Meter Deployment for Electricity; Regulation No. 57-190*

### **Order**

On January 16, 1998, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Pennsylvania Public Utility Commission (PUC). This rulemaking amends 52 Pa. Code Chapter 57. The authority for this regulation is 66 Pa.C.S. §§ 501 and 2807(a) and (d). The proposed regulation was published in the January 31, 1998 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on May 18, 1998.

This regulation implements portions of the Electricity Generation Customer Choice and Competition Act (Act) by establishing procedures for making advanced meters available to customers. The rulemaking establishes uniform procedures and standards for the customer selection

and deployment of advanced meters and provides coordination with any electric distribution company (EDC) for the installation of advanced meter networks.

Additionally, the regulation establishes customer education provisions and a Metering Committee. The Metering Committee's function is to recommend standards to the PUC for advanced electric meters and networks.

The proposal will impact the 11 EDCs under the PUC's jurisdiction and any electric generation suppliers that apply for a license to sell electricity to customers in Pennsylvania. It will also impact customers who request an advanced meter.

We have reviewed this regulation and do not find it to be in the public interest. There are several sections of the proposal that do not meet our criteria of clarity. Further, the proposal contains provisions which represent a policy decision requiring legislative review.

Concerning clarity, revisions to the proposal are necessary in the following areas. The first concern is with § 57.253(a)(2)(a) which states in part "... the Committee will include in the catalog a variety of technologies ...". The Metering Committee is an advisory body which does not have the authority to include technology items in the catalog. The Metering Committee's function in this regard is to recommend to the PUC the inclusion of technologies in the catalog. This section should be corrected to clearly state that the Metering Committee "will recommend to the commission" which technologies will be included in the catalog.

The second concern is with § 57.257(a) which provides that disputes or operation problems between suppliers and an EDC concerning advanced metering "may in the first instance be brought forward for review and resolution, to the extent possible, by the Metering Committee." Subsection (b) says an unresolved dispute or problem will be referred to the Office of Administrative Law Judge (ALJ) or through other proceedings as may be necessary.

It is unclear how an advisory committee could be assigned to handle disputes. Further, in the final-form rulemaking, it is not clear whether the PUC intends that the "unresolved disputes" are those that are not resolved

by the Metering Committee, disputes that the parties take directly to the ALJ or "other proceeding," or both. These provisions should be clarified.

The final clarity concern is with § 57.253(a)(2)(D). It states that "in the absence of an EDC response to costs and incompatibility, the Committee may assume that the subject device is compatible and incremental costs are de minimis." However, the regulation does not contain provisions outlining how or when an EDC is to be informed or how the EDC is to respond. We recommend that language should be added which states when EDCs will be notified that a subject device is under consideration and provide a time period to respond.

*Therefore, It Is Ordered That:*

1. Regulation No. 57-190 from the Pennsylvania Public Utility Commission, as submitted to the Commission on May 18, 1998, is disapproved;

2. The Pennsylvania Public Utility Commission shall, within 7 days of receipt of this Order, notify the Governor, the designated Standing Committees of the House of Representatives and the Senate, and the Commission of its intention to either proceed with the promulgation of the regulation without revisions, to revise the regulation, or to withdraw the regulation. Failure to submit notification within the 7-day period shall constitute withdrawal of the regulation;

3. The Commission will transmit a copy of this Order to the Legislative Reference Bureau; and

4. This Order constitutes a bar to final publication of Regulation No. 57-190 under section 6(b) of the Regulatory Review Act.

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 98-1622. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Notice of Filing of Final-Form Rulemakings

The Independent Regulatory Review Commission received, on the dates indicated, the following final-form regulations for review. To obtain the date and time of the meeting, interested parties may contact the office of the Commission at (717) 783-5417. To obtain a copy of the regulation, interested parties should contact the agency promulgating the regulation.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
16A-575	State Board of Veterinary Medicine Professional Conduct	9/17/98
57-196	Pennsylvania Public Utility Commission Motor Carrier Property Applications	9/22/98
57-184	Pennsylvania Public Utility Commission Standards for Changing Customer's Electric Supplier	9/22/98

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 98-1623. Filed for public inspection October 2, 1998, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Application for Acquisition of Control of a Domestic Stock Casualty Insurance Company

Medical Group Holding, Inc., a Delaware stock company, has filed an application whereby it proposes to purchase the majority of the outstanding shares of common stock of Penn Med, Inc., which will result in the acquisition of control of Pennsylvania Medical Society Liability Insurance Company. The filing was made under the requirements set forth under the Insurance Holding Company Act (40 P. S. § 991.1402 et. seq.) Persons wishing to comment on the proposed acquisition are invited to submit a written statement to the Insurance Department within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Insurance Department of the exact basis of the statement. Written statements should be directed to Michael Graeff, Insurance Company Licensing Specialist, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557; email <http://www.mgraeff@ins.state.pa.us>.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-1624. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing, as authorized by section 9(a) of the act of June 5, 1968 (P. L. 140, No. 78) (40 P. S. § 1008.9(a)) in connection with their company's termination of the insured's automobile policies. All administrative hearings are held in the Insurance Department Offices in Harrisburg, PA. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The hearings will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Louise Courtney; file no. 98-267-33488; Allstate Insurance Company; doc. no. P98-09-007; October 20, 1998, at 10 a.m.;

Appeal of Richard H. Davis; file no. 98-210-33507; State Farm Mutual Automobile Ins. Co.; doc. no. P98-09-008; October 21, 1998, at 10 a.m.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files, documents, photographs, drawings, witnesses and the like necessary to substantiate the case. The insured must bring any evidence which the insured may want to offer at the hearing. The hearing will be held in accordance with the requirements of sections 9 and 10 of the act (40 P. S. §§ 1008.9 and 1008.10) and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if

any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-1625. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Review Procedure Hearings under the Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with their company's termination of the insured's policies. All administrative hearings are held in the Insurance Department Offices in Harrisburg, PA. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The hearing will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Elizabeth Lowery; file no. 98-303-71644; Nationwide Mutual Fire Ins. Co.; doc. no. P98-09-009; October 20, 1998, at 1 p.m.

Both parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files and other necessary evidence. The insured must bring all documents, photographs, drawings, witnesses and the like necessary to substantiate the case. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) and the regulations set forth at 31 Pa. Code § 59.7(e) (relating to appeal procedures). Under 31 Pa. Code § 59.7(e)(5), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) unless specific exemption is given.

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-1626. Filed for public inspection October 2, 1998, 9:00 a.m.]

### State Farm Mutual Automobile Insurance Company; Private Passenger Automobile Insurance; Rate/Rule Filing

On September 8, 1998, the Insurance Department received from State Farm Mutual Automobile Insurance Company a filing for a rate level and rules change for Private Passenger Automobile Insurance.

The company requests an overall 5.4% decrease amounting to a decrease of \$56.7 million annually, to be effective December 15, 1998.

Copies of the filing will be available for public inspection, by appointment, during normal working hours at the Insurance Department's offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit written comments or suggestions to Nabila Audi, Insurance Department, Bureau of Regulation of Rates and Policies, Room 1311, Strawberry Square, Harrisburg, PA 17120, or by e-mail [naudi@ins.state.pa.us](mailto:naudi@ins.state.pa.us).

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 98-1627. Filed for public inspection October 2, 1998, 9:00 a.m.]

## LIQUOR CONTROL BOARD

### Expiration of Leases

The following Liquor Control Board leases will expire:

Bucks County, Wine & Spirits Shoppe #0909, 10 West Centre Avenue, Newtown, PA 18940.

*Lease Expiration Date:* July 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 10,000 net useable square feet of new or existing retail commercial space in the Borough of Newtown.

*Proposals due:* October 9, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Bucks County, Wine & Spirits Shoppe #0926, 132 Veterans Lane, Doylestown, PA 18901.

*Lease Expiration Date:* April 30, 2001

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 9,000 net useable square feet of new or existing retail commercial space in an area 1 mile north of Bucks County Courthouse.

*Proposals due:* October 9, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Chester County, Wine & Spirits Shoppe #1505, 24 Plank Avenue, Paoli, PA 19301.

*Lease Expiration Date:* February 28, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 6,000 net useable square feet of new or existing retail commercial space located on Lincoln Highway Route #30 between Route #252, Bear Hill Road and Route #29, Phoenixville Road in Tredyffrin or Willistown Township.

*Proposals due:* October 9, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Delaware County, Wine & Spirits Shoppe #2311, 4316 Woodland Avenue, Drexel Hill, PA 19026.

*Lease Expiration Date:* August 31, 1998

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 3,000 net useable square feet of new or existing retail commercial space in the community of Drexel Hill.

*Proposals due:* October 9, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, 4501 Kelly Drive, Philadelphia, PA 19129-1794  
**Contact:** Robert Jolly, (215) 560-5310

Lackawanna County, Wine & Spirits Shoppe #3510, Plaza 1500, 1531 Main Street, Peckville, PA 18452-2016.

*Lease Expiration Date:* September 30, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 4,600 net useable square feet of new or existing retail commercial space within the Borough of Blakely.

*Proposals due:* October 9, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Charles D. Mooney, (717) 657-4228

Franklin County, Wine & Spirits Shoppe #2804, 9 S. Main Street, Mercersburg, PA 17236-1515.

*Lease Expiration Date:* September 30, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 1,200 to 2,000 net useable square feet of new or existing retail commercial space within the Borough of Mercersburg or the Townships of Montgomery and Peters.

*Proposals due:* October 9, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Bureau of Real Estate, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Charles D. Mooney, (717) 657-4228

Beaver County, Wine & Spirits Shoppe #0405, 508 Midland Avenue, Midland, PA 15059-1313.

*Lease Expiration Date:* August 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 1,500

net useable square feet of new or existing retail commercial space in the Midland Business District.

*Proposals due:* November 6, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** George Danis, (412) 565-5130

Fayette County, Wine & Spirits Shoppe #2604, 105 S. Main Street, Masontown, PA 15461-2041.

*Lease Expiration Date:* October 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 1,500 net useable square feet of new or existing retail commercial space serving the Masontown and German Township market area. The location should have off-street parking and good loading facilities.

*Proposals due:* November 6, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** Tom Deal, (412) 565-5130

Greene County, Wine & Spirits Shoppe #3002, 202 E. George Street, Carmichaels, PA 15320-1204.

*Lease Expiration Date:* September 30, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 1,500 net useable square feet of new or existing retail commercial space serving the Carmichael area or Cumberland Township market area. The location should have off-street parking and good loading facilities.

*Proposals due:* November 6, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** Tom Deal, (412) 565-5130

Indiana County, Wine & Spirits Shoppe #3205, Regency Mall, 1570 Rt. 286S, Indiana, PA 15701-2497.

*Lease Expiration Date:* September 30, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 3,000 net useable square feet of new or existing retail commercial space on State Route 286 Southwest between Indiana Borough and State Route 422. The location should have free, off-street parking and good loading facilities.

*Proposals due:* November 6, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** Tom Deal, (412) 565-5130

Westmoreland County, Wine & Spirits Shoppe #6501, 105 Harrison Avenue, Greensburg, PA 15601-2304.

*Lease Expiration Date:* September 30, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Penn-

sylvania Liquor Control Board with approximately 3,500 to 4,000 net useable square feet of new or existing retail commercial space to serve downtown Greensburg. The location must have access for tractor trailer deliveries and metered parking.

*Proposals due:* November 6, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** Bruce VanDyke, (412) 565-5130

Luzerne County, Wine & Spirits Shoppe #4032, 6 N. Broad Street, West Hazleton, PA 18201-3765.

*Lease Expiration Date:* March 31, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 3,000 to 4,000 net useable square feet of new or existing retail commercial space within West Hazleton Borough.

*Proposals due:* November 6, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Charles D. Mooney, (717) 657-4228

Luzerne County, Wine & Spirits Shoppe #4022, Weis Market Shopping Center, South Mountain Boulevard, R. D. 9, Mountaintop, PA 18707-9804.

*Lease Expiration Date:* January 31, 2000

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 2,200 to 2,800 net useable square feet of new or existing retail commercial space along PA Route 309 in Fairview or Wright Townships.

*Proposals due:* November 6, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Ronald Hancher, (717) 657-4228

Franklin County, Wine & Spirits Shoppe #2803, 324 W. Franklin Street, Greencastle, PA 17225-1544.

*Lease Expiration Date:* June 30, 1999

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 2,000 to 2,600 net useable square feet of new or existing retail commercial space along US Route 11 in Antrim Township or Greencastle Borough within 2 miles of the intersection with PA Route 16.

*Proposals due:* November 6, 1998 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Ronald Hancher, (717) 657-4228

JOHN E. JONES, III,  
*Chairperson*

[Pa.B. Doc. No. 98-1628. Filed for public inspection October 2, 1998, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Abandon Service/Commence Service Without Hearing

**A-122350F2005 and A-121350F0002. T. W. Phillips Gas and Oil Co. and Larkin Oil and Gas Co.** Joint application for approval of abandonment of service by T. W. Phillips Gas and Oil Co. and commencement of service by Larkin Oil and Gas Co. to 12 residential customers in Madison Township, Armstrong County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before October 19, 1998, under 52 Pa. Code (relating to public utilities).

*Applicants:* T. W. Phillips Gas and Oil Co.

*Through and By Counsel:* Jay W. Dawson, Esquire, 205 North Main Street, Butler, PA 16001 and Larkin Oil and Gas Co.

*Through and by Owner:* Randy L. Larkin, P. O. Box 58, Callensburg, PA 16213.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-1629. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before October 26, 1998, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protest shall also indicate whether it applies to the temporary authority application or the permanent application or both.

**Applications of the following for approval of the *additional right and privilege of operating motor vehicles as common carriers for transportation of persons by transfer of rights* as described under each application.**

**A-00115042, Folder 2. Montage Courier & Messenger Service, Inc.** (707 North South Road, Scranton, Lackawanna County, PA 18504), a corporation of the Commonwealth of Pennsylvania—persons in limousine service, in luxury-type equipment, restricted to Rolls Royce or Mercedes Benz 450 SE with a seating capacity not to exceed nine persons, including a uniformed chauffeur, for a minimum period of 2 hours, between points in the counties of Pike, Wayne, Susquehanna, Wyoming, Luzerne, Lackawanna, Monroe, Northampton, Lehigh, Bucks, Montgomery and Philadelphia, subject to the following restriction: provided that Montage Courier & Messenger Service, Inc. shall not establish, maintain,

lease or otherwise occupy an office, dispatching or reservation facility, maintenance or storage garage within Luzerne County; which is to be a transfer of all of the right authorized under the certificate issued at A-00101741 to Salem Hall, Inc., a corporation of the Commonwealth of Pennsylvania, subject to the same limitations and conditions. *Attorney:* Richard T. Mulcahey, Jr., Two Penn Center, Suite 1400, 1500 John F. Kennedy Boulevard, Philadelphia, PA 19102-1890.

**Applications of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under each application.**

**A-00115315. Terry A. & Darleen C. Christy, tenants by entirety, t/d/b/a Christy Cab Co.** (1301 Frankstown Road, Johnstown, Cambria County, PA 15902)—persons upon call or demand in the borough of Windber, Somerset County, and within a radius of 7 miles thereof; which is to be a transfer of part of the rights authorized under the certificate issued at A-00092658, F. 2 to Edward J. Kardos, t/d/b/a Friendly Cab Company by Nancy Kardos, Administratrix for the Estate of Edward J. Kardos, subject to the same limitations and conditions.

**Motor Carrier Applications—Property, Excluding Household Goods in Use**

The following applications for the authority to transport property, excluding household goods in use, between points in Pennsylvania, have been filed with the Pennsylvania Public Utility Commission. Public comment to these applications may be filed, in writing with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 on or before October 19, 1998.

- |                 |                                                                                                                                                                                           |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A-00115324      | Lag Transport, Inc.<br>83 Foote Avenue, Duryea, PA 18642:<br>Girard J. Mecadon, Greater Pittston<br>Professional Center, 126 South Main<br>Street, Suite 200, Pittston, PA 18640-<br>1719 |
| A-00115323      | Donald K. Moyer, Jr., t/a Day Star<br>Trucking<br>4950 A Carlisle Road, Dover, PA<br>17315                                                                                                |
| A-00115322      | Michael J. Quigley, t/a Mason & Dixon<br>Box 132, Club Road, Oley, PA 19547                                                                                                               |
| A-00115321      | Williams & Franks, Inc.<br>160 Sharpe Street, Nanticoke, PA<br>18634                                                                                                                      |
| A-00115320      | Stragan, Inc.<br>1832 Monroe Street, York, PA 17404:<br>Barbara Stump, 29 N. Queen Street,<br>York, PA 17403                                                                              |
| A-00103806 F. 2 | Nestlerode Contracting Company, Inc.<br>145 East Walnut Street, Lock Haven,<br>PA 17745                                                                                                   |
| A-00115304      | David B. Shirk, Inc.<br>R. R. 1, Box 980, Martinsburg, PA<br>16662: Thomas M. Reese, 202 South<br>Market Street, Martinsburg, PA<br>16662                                                 |
| A-00115305      | Sacks & Co., Inc.<br>8 Big Road, Zieglerville, PA 19492                                                                                                                                   |

- |            |                                                                                                                                                        |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| A-00115306 | Dean E. Martin, t/a Dean Martin<br>Enterprises<br>R. D. 1, Box 311, New Stanton, PA<br>15672                                                           |
| A-00115307 | James P. Keating, t/a James Keating<br>Excavating<br>P. O. Box 223, Elmhurst, PA 18416                                                                 |
| A-00115308 | North Winds Express, Inc.<br>1822 Red Barn Village, Clarks Sum-<br>mit, PA 18411: Michael Walker, P. O.<br>Box 747, Hamlin, PA 18427                   |
| A-00115309 | Jerome Negley<br>113 Pinnacle Drive, Newburg, PA<br>17240: David H. Radcliff, 3905 North<br>Front Street, Harrisburg, PA 17110                         |
| A-00115316 | Nicholas Trucking Co., Inc.<br>99 Courtdale Avenue, Courtdale, PA<br>18704: Leonard Tintner, 315 North<br>Front Street, Harrisburg, PA 17108           |
| A-00115317 | Dennis M. Kennel, t/a D. M. Kennel<br>Trucking<br>1318 Red Run Road, Steven, PA<br>17578                                                               |
| A-00115318 | Liberty Truck Center, Inc.<br>P. O. Box 239, Harford, PA 18823:<br>Robert J. Gillespie, Jr., Suite 200, 15<br>Public Square, Wilkes-Barre, PA<br>18701 |
| A-00115319 | Leroy Fisher, t/a Fisher Sales<br>and Service<br>436 West 2nd Street, Williamsburg,<br>PA 16693                                                        |

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-1630. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Telecommunications

**A-310633F0002. Bell Atlantic-Pennsylvania, Inc. and Level 3 Communications, L.L.C.** Joint Petition of Bell Atlantic-Pennsylvania, Inc. and Level 3 Communications, L.L.C. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Bell Atlantic-Pennsylvania, Inc. and Level 3 Communications, L.L.C., by its counsel, filed on September 14, 1998, at the Pennsylvania Public Utility Commission, a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 20 days after the date of publication of this notice. Copies of the Bell Atlantic-Pennsylvania, Inc. and Level 3 Communications, L.L.C. Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.



The contact person is Cheryl Walker Davis, Director,  
Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-1631. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Telecommunications

**A-310638F0002. Bell Atlantic-Pennsylvania, Inc. and Telephone Company of Central Florida, Inc. d/b/a TCCF.** Joint Petition of Bell Atlantic-Pennsylvania, Inc. and Telephone Company of Central Florida, Inc. d/b/a TCCF, for approval of a resale agreement under section 252(e) of the Telecommunications Act of 1996.

Bell Atlantic-Pennsylvania, Inc. and Telephone Company of Central Florida, Inc., d/b/a TCCF, by its counsel, filed on August 31, 1998, at the Pennsylvania Public Utility Commission, a joint petition for approval of a resale agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 20 days after the date of publication of this notice. Copies of the Bell Atlantic-Pennsylvania, Inc. and Telephone Company of Central Florida, Inc., d/b/a TCCF Joint Petition are on file with the Pennsylvania Public Utility Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director,  
Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-1632. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Telecommunications

**A-310725F0002. MJD Telechoice Corp. and GTE North, Inc.** Letter Petition of MJD Telechoice Corp. and GTE North, Inc. for approval of a Resale Agreement under sections 251 and/or 252 of the Telecommunications Act of 1996.

MJD Telechoice Corp., by its counsel, filed on September 10, 1998, at the Pennsylvania Public Utility Commission (Commission), a Letter Petition for approval of a Resale Agreement between MJD Telechoice Corp. and GTE North, Inc. under sections 251 and/or 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the letter petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 20 days after the date of publication of this notice. Copies of the Petition and Agreement are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director,  
Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-1633. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Transfer of Stock Without Hearing

**A-110050F5000. Citizens' Electric Company, et al.** Joint application of Citizens' Electric Company, C&T Enterprises, Inc., Tri-County Rural Electric Cooperative, Inc. and Claverack Rural Electric Cooperative, Inc. for approval of the transfer of all of the capital stock of Citizens' Electric Company.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before October 19, 1998, under 52 Pa. Code (relating to public utilities).

*Applicants:* Citizens' Electric Company, C&T Enterprises, Inc., Tri-County Rural Electric Cooperative, Inc., and Claverack Rural Electric Cooperative, Inc.

*Through and By Counsel:* Kenneth Zielonis, Esquire, Stevens & Lee, Suite 310, 208 North Third Street, P. O. Box 12090, Harrisburg, PA 17108-2090.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-1634. Filed for public inspection October 2, 1998, 9:00 a.m.]

### Water Service Without Hearing

**A-212370F0049. Philadelphia Suburban Water Company.** Application of Philadelphia Suburban Water Company for approval to begin to offer, render, furnish and supply water service to the public in additional territory in Cumru Township, Berks County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before October 19, 1998, under 52 Pa. Code (relating to public utilities).

*Applicant:* Philadelphia Suburban Water Company

*Through and By Counsel:* Mark J. Kropilak, Esquire, Vice President and General Counsel, Philadelphia Suburban Water Company, 762 Lancaster Avenue, Bryn Mawr, PA 19010.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 98-1635. Filed for public inspection October 2, 1998, 9:00 a.m.]

# PHILADELPHIA REGIONAL PORT AUTHORITY

## Request for Proposals

The Philadelphia Regional Port Authority (PRPA) will accept proposals until 2 p.m. on Wednesday, October 14, 1998, for Project #98-264-001, (Purchase of Computer Software). The bid document can be obtained from the Director of Procurement, Philadelphia Regional Port Authority (PRPA), 210 W. Washington Square, 13th Floor, Philadelphia, PA 19106, (215) 928-9100 and will be available Tuesday, October 6, 1998. PRPA is an equal opportunity employer. The contractor will be required to comply with all applicable equal opportunity laws and regulations.

JAMES T. MCDERMOTT,  
*Executive Director*

[Pa.B. Doc. No. 98-1636. Filed for public inspection October 2, 1998, 9:00 a.m.]

# STATE ETHICS COMMISSION

## Public Meeting

The Public Official and Employee Ethics Law requires that the State Ethics Commission hold at least two public hearings each year to seek input from persons and organizations who represent any individual subject to the provisions of the law and from other interested parties.

The State Ethics Commission will conduct a public meeting in the Lancaster Host Resort & Conference Center, 2300 Lincoln Highway East, Lancaster, PA on October 9, 1998, beginning at 9 a.m. for purposes of receiving said input and for the conduct of other agency business. Public officials, public employees, organizations and members of the general public may attend.

Persons seeking to testify or present any statement, information or other comments in relation to the Ethics Law, the regulations of the State Ethics Commission or agency operations should contact Claire Hershberger at

(717) 783-1610 or (800) 932-0936. Written copies of any statement should be provided at the time of said meeting.

JOHN J. CONTINO,  
*Executive Director*

[Pa.B. Doc. No. 98-1637. Filed for public inspection October 2, 1998, 9:00 a.m.]

# TURNPIKE COMMISSION

## Request for Proposals

Sealed proposals will be received by Jeffrey L. Hess, Purchasing Manager, at the Administration Building, Harrisburg-East Interchange near Highspire, PA (Mailing Address: P. O. Box 67676, Harrisburg, PA 17106-7676) and publicly opened and read at the date and time indicated for the following contract:

**Contract No. 99-009-RW59**—Median barrier placement and median reconstruction from MP 128.93 to MP 138.29 and milling and resurfacing from MP 128.73 to MP 133.04 in Somerset and Bedford Cos., PA

*Bid Opening Date*—November 5, 1998, 11 a.m.

*Bid Surety*—5%

Plans, Specifications and Contract Documents will be available and open for public inspection at the Administration Building. Copies may be purchased upon payment of \$35 per set by check or P. O. Money Order (no cash) payable to the Pennsylvania Turnpike Commission, Attention: Secretary-Treasurer's Office, P. O. Box 67676, Harrisburg, PA 17106-7676. No refund for any reason will be made for plans, specifications and contract documents.

A Prequalification Certification and Maximum Capacity Rating assigned by the Prequalification Committee of the Pennsylvania Department of Transportation is a necessary prerequisite for bidding on this project.

Contact the Purchasing Manager for listing of other locations where plans and specs can be inspected.

Direct any questions on this project to Inessa Evenchik at (717) 939-9551, Ext. 5770.

JAMES F. MALONE, III,  
*Chairperson*

[Pa.B. Doc. No. 98-1638. Filed for public inspection October 2, 1998, 9:00 a.m.]

# STATE CONTRACTS INFORMATION

## DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over \$10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

**EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.**

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". A qualified small business concern is an independently owned, operated for profit, business employing 100 or fewer employees and is not a subsidiary or affiliate of a corporation otherwise not qualified.

Such penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter. The small business concern must include on every invoice submitted to the Commonwealth: "(name of vendor) is a qualified small business concern as defined at 4 Pa. Code § 2.32".

For information on the required payment date and annual interest rate, please call the Pennsylvania Department of Commerce, Small Business Action Center, 483 Forum Building, 783-5700.

### Reader's Guide

#### Legal Services & Consultation—26

- ① Service Code Identification Number
- ② Commodity/Supply or Contract Identification No.

**B-54137.** Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services  
Location: Harrisburg, Pa.  
Duration: 12/1/93-12/30/93  
Contact: Procurement Division  
787-0000

③ Contract Information

④ Department

⑤ Location

⑥ Duration

⑦  
(For Commodities: Contact:)  
Vendor Services Section  
717-787-2199 or 717-787-4705

#### REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

## GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Bureau personnel can supply descriptions of contracts, names of previous bidders, pricing breakdowns and other information to help you submit a successful bid on a contract. We will direct you to the appropriate person and agency looking for your product or service to get you "A Step Ahead." Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure, *"Frequently Asked Questions About State Contracts,"* explains how to take advantage of the bureau's services.

Contact: **Bureau of Contracts and Public Records**

Pennsylvania State Treasury  
Room G13 Finance Building  
Harrisburg, PA 17120  
717-787-2990  
1-800-252-4700

BARBARA HAFER,  
State Treasurer

**Online Subscriptions At <http://www.statecontracts.com> 1-800-334-1429 x340**

### Commodities

**1198158** Communication equipment—1 system furnish, install and make operational a monitoring system for loading docks and BL3 lab of State Veterinary; 3 each Computar CX-EV48 black and white cameras or equal; 1 each Computar PIH-09—4 9" black and white monitor or equal; 1 each Peerless CS9 Small Classic Series wall mount or equal; 1 each system installation including all cables and connections; 1 system furnish, install and make operational a monitoring system for Necropsy Area of State Veterinary Laboratory; 2 each Panasonic WV-CS404 unitized color cameras or equal; 1 each Panasonic PHM-5 hanging mount bracket or equal; 1 each Panasonic PWM-5 wall mount bracket or equal; 2 each Panasonic CT-1386Y 13" monitor or equal; 2 each Panasonic WV-CU151 camera controllers or equal; 1 each Panasonic CT-2086Y 20" monitors or equal; 1 each Peerless JMC640 monitor wall mount or equal; 1 each TECNEC PSW-6 audio/video switcher or equal; 2 each Kramer MS-50V video distribution amplifier or equal; 1 each Airphone LEF-5 4-station intercom system or equal; 1 each system installation, including all cables and connections.

**Department:** Agriculture  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1260148** Communication equipment—1 each Justice Series—Auto Evidence Presentation System Model XEP-1000C-25; 1 each infrared speakers system package—Model XSP-1R.

**Department:** Attorney General  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**8120760** Construction, mining, excavating and highway maintenance equipment—3 each side dozer attachment to mount on Quaick attach mountings for use on a Case Model 1845C skid steer loader.

**Department:** Transportation  
**Location:** Schuylkill Haven, Schuylkill County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**8249670** Construction, mining, excavating and highway maintenance equipment—134 each Lance, hot air.

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1111218** Heating oil—100,000 gallons No. 4 heating oil, maximum sulfur content 2.8%.

**Department:** Public Welfare  
**Location:** Harrisburg State Hospital, Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1194048** Maintenance and repair shop equipment—1 system trailer mounted mobile gasoline prover system w/three 5 gallon provers and one 25 gallon prover unit.

**Department:** Agriculture  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**8147610** Maintenance and repair shop equipment—1 system furnish and set-up vehicle lift—heavy four post—surface mounted 30,000 lb. capacity rotary model No. 302 or approved equal.

**Department:** Transportation  
**Location:** Waynesburg, Greene County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1193228** Paper and printing—170M Registration Renewal Card; 170M inserts/flyers size 7 1/2" up to 7 5/8"; 170M return envelopes; 170M No. 9 outside envelopes; 170M data processing and lettershop.

**Department:** Fish and Boat Commission  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1233208** Paper and printing—30 M SP7-0033 Unattended Vehicle Tag two part carbon interleaved snapout.

**Department:** State Police  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1249158** Paper and printing—285M STD-C929 Time and Attendance Record, 3 part continuous form, carbonless form.

**Department:** General Services  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**7314150** Paper and printing—3,000 carton paper, cash register roll, printer for IBM POS Model 4683 and 4684 IBM Part No. 0432767 or equal.

**Department:** Liquor Control Board  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

**1074158** Paper and printing—200 M STD-191 Travel Expense Voucher, 4 part snap set.

**Department:** General Services  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services: fax request to (717) 787-0725 or call (717) 787-2199

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# SERVICES

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## Agricultural Services—02

**325559** The selected vendor will be awarded a 3-year Service Purchase Contract to provide complete veterinarian medical services to the herd at the Graterford's Farm Department, that is, medications, surgeries, diagnostic examinations, laboratory services, and the like. The contract will be awarded on an as-needed basis. Veterinarian will be available during the week, holidays, evenings, weekends.

**Department:** Corrections  
**Location:** Correctional Industries, P. O. Box 246 (off Route 29), Graterford, PA 19426-0244  
**Duration:** July 1, 1999 to June 30, 2002  
**Contact:** M. Sproul, Farm Manager, (610) 489-4157

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## Audio/Video—04

**Inquiry No. 17** Provide for the rental and air time of cellular flip phones and a bag cellular telephone. A copy of the bid packet can be obtained by contacting the Purchasing Department at (610) 740-3428 or by faxing a request to (610) 740-3424.

**Department:** Public Welfare  
**Location:** Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18103-2498  
**Duration:** July 1, 1999 through June 30, 2003  
**Contact:** T. F. Snyder, Purchasing Agent, (610) 740-3428

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**5208** Contract for services covering the necessary labor, material, equipment, parts and the like to service/repair two-way radio communication equipment, mobile units, remote units, repeater system and antenna system.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** July 1, 1999—June 30, 2003  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

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**0921-JWO** The Department of General Services desires to issue a Service Purchase Contract for a contractor to perform site development work at nine proposed communications tower sites in the following areas: one site in Clearfield, Clinton, Crawford, Dauphin, Snyder, Tioga and Venango counties; and two sites in Lycoming County. Site work requires: access roads; site clearing and grading; site preparation and clean up; clearing and grubbing; guy wire clearance; site grounding; site graveling; draining; fencing; electrical work; foundations for towers, shelters and generators; tower, shelter and generator installation; excavation and backfill. Assumed tower height is 330 feet. The towers, shelters and generators shall be provided by the Commonwealth. Pricing is desired for each site. Contractors who bid on multiple sites must be able to provide site work at multiple sites simultaneously to meet the Commonwealth's schedule.

**Department:** General Services  
**Location:** Purchases, Radio Project Office: Clearfield, Clinton, Crawford, Dauphin, Lycoming, Snyder, Tioga and Venango Counties, PA  
**Duration:** October 26, 1998—June 30, 1999  
**Contact:** John W. Obradovich, (717) 772-8031

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## Construction—09

**Contract No. FDC-409-433** Construction of a new two-story addition and alterations to the Park Manager's residence at Hickory Run State Park.

**Department:** Conservation and Natural Resources  
**Location:** Kidder Township, Carbon County, PA  
**Duration:** 65 days  
**Contact:** Construction Management Section, (717) 787-5055

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**MI-719** Project title: Chryst Hall Roof Replacement. Scope of work: Reroof a two-story building, totaling 7,000 square feet; remove existing foam and gravel built-up roof and insulation; and install new cold applied built-up roofing system. Plans cost: \$25 nonrefundable.

**Department:** State System of Higher Education  
**Location:** Chryst Hall, Millersville University, Millersville, Lancaster County, PA 17551-0302  
**Duration:** 30 calendar days from Notice to Proceed  
**Contact:** Jill M. Coleman, Dilworth Building, (717) 872-3730

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## Demolition—11

**0500-R/W 0222-001-002-003** Sealing and boarding of vacant buildings, SR 222-001-002-003, Berks County, PA.

**Department:** Transportation  
**Location:** Transportation District 5-0, Berks County, PA  
**Duration:** Open  
**Contact:** William C. Skrapits, (610) 603-0201

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## Elevator Maintenance—13

**Project No. KU 99-05** Kutztown University is seeking qualified contractors to replace the existing freight elevator at the South Dining Hall at Kutztown University. Work to include but is not limited to: removal of existing elevator assembly including cab, signal fixtures, doors frames, power unit and controller; installation of new elevator assembly; rehabilitation of existing components and spaces. Bid packages are available from: Janet Spahr, STV Architects, 205 West Welsh Drive, Douglassville, PA 19518, (610) 385-8219. Bid packages are available October 5, 1998 through prebid. A prebid meeting has been scheduled for Tuesday, October 13, 1998, at 10 a.m. Bids must be received on October 27, 1998, by 2 p.m. and will be opened on October 27, 1998, at 2 p.m. in Room 229, Office of Planning and Construction, Kutztown, PA 19530.

**Department:** State System of Higher Education  
**Location:** Kutztown University, Kutztown, PA 19530  
**Duration:** 90 days after Notice to Proceed  
**Contact:** Barbara Barish, Contract Specialist, (610) 683-4602

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**Financial Services—17**

**BOA-98/99-001** The Office of the Budget is issuing a Request for Proposal (RFP) for an audit of the Commonwealth's General Purpose Financial Statements and its Federal awards for the fiscal years ending June 30, 1999, 2000 and 2001. The selected contractor will perform the audits jointly with the Pennsylvania Department of the Auditor General with joint opinions being issued for the audits. The audit scope will cover the reporting requirements in effect for obtaining GFOA's Certificate of Achievement for Excellence in Financial Reporting and to meet the requirements of the Single Audit Act Amendments. This RFP also requires the selected auditor contractor to provide annual training/updates on GAAP and Generally Accepted Auditing Standards equivalent to 24 classroom hours each year for up to 200 people. A preproposal conference will be held on Wednesday, October 21, 1998, at 1:15 p.m., Department of Revenue, 11th Floor Training Room, Room 1125 Strawberry Square, Harrisburg, PA 17128. Attendance at the preproposal conference is mandatory. Proposals will not be accepted from proposers who are not represented at the preproposal conference.

**Department:** Office of the Budget  
**Location:** Comptroller Operations, vast majority of work in Harrisburg area  
**Duration:** Three year contract with two 1-year extension options exercisable by the Commonwealth  
**Contact:** Harvey C. Eckert, Deputy Secretary for Comptroller Operations, (717) 787-6496

**Food—19**

**B-37 through B-48** Bread, white, wheat, no pork product, Wonder Bread not acceptable. Average monthly usage, 35,000 loaves rolls, 1,200 dozen, hot dog—1,200 dozen steak—1,200 dozen to include any other related product as needed. To be bid out on a monthly basis.

**Department:** Corrections  
**Location:** State Correctional Institution Graterford, P. O. Box 246, Off Route 29, Graterford, PA 19426-0246  
**Duration:** One year  
**Contact:** Kelly Richardson, (610) 489-4151, Ext. 2429

**B-169 through B-180** Pastry to include Danish, muffins, doughnuts, cupcakes and any other related products to be bid out on a monthly basis.

**Department:** Corrections  
**Location:** State Correctional Institution Graterford, P. O. Box 246, off Route 29, Graterford, PA 19426-2046  
**Duration:** One year  
**Contact:** Kelly Richardson, (610) 489-4151, Ext. 2429

**CRE-FS-0231** Milk products, to consist of 2% and skim milk in 1/2 pint and gallon containers. Estimated quantities. Bid proposal on file in agency purchasing department.

**Department:** Corrections  
**Location:** State Correctional Institution at Cresson, P. O. Box A, old Route 22, Cresson, PA 16699-0001  
**Duration:** November 1, 1998 to June 30, 1999  
**Contact:** Barbara A. Lloyd, Purchasing Agent, (814) 886-8181, Ext. 166

**SO-156** Milk: whole milk (bulk) 5 gallon containers; whole milk, 1/2 pint containers; skim milk, 1/2 pint containers. Contract will cover October 1, 1998 through June 30, 1999.

**Department:** Corrections  
**Location:** State Correctional Institution at Somerset, 1590 Walters Mill Road, Somerset, PA 15510-0001  
**Duration:** October 1, 1998 through June 30, 1999  
**Contact:** Theresa Solarczyk, Purchasing Agent II, (814) 443-8100, Ext. 311

**Hazardous Material Services—21**

**IRRSC-4** The Commonwealth of Pennsylvania, Department of Environmental Protection, is soliciting proposals from experienced and qualified firms interested in providing interim response and remediation services under Act 108 of 1988 (Hazardous Sites Cleanup Act) and Act 32 of 1989 (Storage Tank and Spill Prevention Act). A more detailed description of tasks is included in the Request for Proposal. Proposals are due no later than 4 p.m. on December 4, 1998. A Preproposal Conference is scheduled for Friday, October 16, 1998, at 10 a.m. in the Rachel Carson State Office Building, 2nd Floor Auditorium, Harrisburg, PA.

**Department:** Environmental Protection  
**Location:** Statewide  
**Duration:** June 2000—June 2003  
**Contact:** Shiela Barley, (717) 783-9475

**HVAC—22**

**5211** Contractor to provide all necessary labor, equipment, materials and parts to service, test, balance and calibrate steam flow recorders on Stoker fired steam boilers and Hagan pneumatic controls.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** July 1, 1999—June 30, 2003  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

**060157** Maintenance service to HVAC system in front office and garage. Maintenance to two gas fired H. B. Smith steam boilers w/power flame burners. Radiators and ceiling units in front office and garage area. Maintenance to one roof mounted Carrier Weathermaster 50HS5009 and one Carrier 38BRB air conditioner and all components of these systems.

**Department:** Transportation  
**Location:** PennDOT Maintenance District 6-3, 426 South Old Middletown Road, Bortondale, PA 19063  
**Duration:** January 1, 1999 to December 31, 1999  
**Contact:** Daniel Graham, (610) 566-0972

**12R-019** Provide complete repair of all electrical systems at the Welcome Center site according to bid specifications. Estimated start date February 01, 1999. Requests for bid packages are to be faxed to Michael D. Maurer, District Roadside Specialist at (724) 439-7360.

**Department:** Transportation  
**Location:** District 12-0, Greene County Welcome Center, Interstate 79 North-bound approximately 6 mile marker  
**Duration:** One year with two 2-year renewals  
**Contact:** Michael D. Maurer, (724) 439-7374

**12R-020** Provide complete repair of all plumbing systems at the Welcome Center site according to bid specifications. Estimated start date February 01, 1999. Requests for bid packages are to be faxed to Michael D. Maurer, District Roadside Specialist at (724) 439-7360.

**Department:** Transportation  
**Location:** District 12-0, Greene County Welcome Center, Interstate 79 North-bound approximately 6 mile marker  
**Duration:** One year with two 2-year renewals  
**Contact:** Michael D. Maurer, (724) 439-7374

**120R-021** Provide complete operation of wastewater treatment plant according to bid specifications. Requests for bid packages are to be faxed to Michael D. Maurer, District Roadside Specialist at (724) 439-7360.

**Department:** Transportation  
**Location:** District 12-0, Greene County Welcome Center, Interstate 79 North-bound approximately 6 mile marker  
**Duration:** One year with two 2-year renewals  
**Contact:** Michael D. Maurer, (724) 439-7374

**Project No. 409-AI** "Stevenson Library Chiller Replacement," Project 409-AI. Lock Haven University of PA, part of the State System of Higher Education, is seeking bids for mechanical and electrical construction. A prebid meeting will be held Monday, October 05, 1998 (9:30 a.m.) in Price Auditorium. Prospective bidders are encouraged to attend. Bids are due Wednesday, October 21, 1998, at 2 p.m. For further information, or to request contract documents at a nonrefundable fee of \$75, bidders can contact Paulette Rider of Comprehensive Design, 3054 Enterprise Drive, State College, PA 16801, (814) 238-7706. Contract bonds, prevailing wages and MBE/WBE participation apply. The System encourages responses from small firms, minority firms, women-owned firms and firms which may have not previously performed work for the System. Nondiscrimination and Equal Opportunity are the policies of the Commonwealth and of the State System of Higher Education.

**Department:** State System of Higher Education  
**Location:** Lock Haven University of PA, Stevenson Library, Lock Haven, PA 17745  
**Duration:** 140 calendar days from Notice to Proceed  
**Contact:** Comprehensive Design (Paulette Rider), (814) 238-7706

**Project No. 409-AJ** "Raub Hall Chiller Replacement," Project 409-AJ. Lock Haven University of PA, part of the State System of Higher Education, is seeking bids for mechanical and electrical construction. A prebid meeting will be held Monday, October 05, 1998 (9:30 a.m.) in Price Auditorium. Prospective bidders are encouraged to attend. Bids are due Wednesday, October 21, 1998, at 2 p.m. (EST). For further information, or to request contract documents at a nonrefundable fee of \$75, bidders can contact Paulette Rider of Comprehensive Design, 3054 Enterprise Drive, State College, PA 16801, (814) 238-7706. Contract bonds, prevailing wages and MBE/WBE participation apply. The System encourages responses from small firms, minority firms, women-owned firms and firms which may have not previously performed work for the System. Nondiscrimination and Equal Opportunity are the policies of the Commonwealth and of the State System of Higher Education.

**Department:** State System of Higher Education  
**Location:** Lock Haven University of PA, Raub Hall, Lock Haven, PA 17745  
**Duration:** 140 calendar days from Notice to Proceed  
**Contact:** Comprehensive Design (Paulette Rider), (814) 238-7706

**Project No. 409-AK** "Robinson Hall Chiller Replacement," Project 409-AK. Lock Haven University of PA, part of the State System of Higher Education, is seeking bids for mechanical and electrical construction. A prebid meeting will be held Monday, October 05, 1998 (9:30 a.m.) in Price Auditorium. Bids will be due Wednesday, October 21, 1998, at 2 p.m. For further information, or to request contract documents at a nonrefundable fee of \$75, bidders can contact Paulette Rider of Comprehensive Design, 3054 Enterprise Drive, State College, PA 16801, (814) 238-7706. Contract bonds, prevailing wages and MBE/WBE participation apply. The System encourages responses from small firms, minority firms, women-owned firms and firms which may have not previously performed work for the System. Nondiscrimination and Equal Opportunity are the policies of the Commonwealth and of the State System of Higher Education.

**Department:** State System of Higher Education  
**Location:** Lock Haven University of PA, Robinson Hall, Lock Haven, PA 17745  
**Duration:** 140 calendar days from Notice to Proceed  
**Contact:** Comprehensive Design (Paulette Rider), (814) 238-7706

**00714-001-98-AS-1** Lightning Protection for Joseph Priestley House. Installation of a new lightning protection system. A mandatory site visit and sign in will be held between October 12, 1998, and October 22, 1998, at Joseph Priestley House for all firms interested in submitting bids for the project. Please contact the site at (717) 473-9474 for directions and to schedule a site visit and sign in. No bids will be accepted by contractors who do not make the mandatory site visit and sign in. For directions, please contact the site at (717) 473-9474. All interested bidders should submit a request for the purchase of the bid package in writing or fax (717) 783-1073 along with a \$25 check (nonrefundable) made payable to PHMC and mailed to: PA Historical and Museum Commission, Division of Architecture, P. O. Box 1026, Room 526, Harrisburg, PA 17108-1026, Attention: Judi Yingling. Bids are due on Tuesday, November 3, 1998, at 2 p.m. Bid opening will be held in Room 526 of The State Museum of PA, corner of 3rd and North Streets, Harrisburg, PA.

**Department:** Historical and Museum Commission  
**Location:** Bureau of Historic Sites and Museums, Joseph Priestley House, 472 Priestley Avenue, Northumberland, PA 17857  
**Duration:** July 1, 1998 to June 30, 1999  
**Contact:** Judi Yingling or Ron Foflygen, (717) 772-2401

**SP 402256** Sealed bids will be received at the Department of Conservation and Natural Resources, Bureau of Facility Design and Construction, P. O. Box 387, 195 Park Road, Prospect, PA 16052-0387, and then publicly opened and read. A bid opening date has not yet been set. For repair/maintenance/installation of electrical equipment and electric service connections for campground electric sites at Pymatuning State Park. A bid proposal containing all pertinent information must be obtained from the Department of Conservation and Natural Resources, Bureau of Facility Design and Construction, P. O. Box 387, 195 Park Road, Prospect, PA 16052.

**Department:** Conservation and Natural Resources  
**Location:** Pymatuning State Park, 2660 Williamsfield Road, Jamestown, PA 16134  
**Duration:** Contract to be completed by June 30, 1999  
**Contact:** Conservation and Natural Resources, (724) 865-2131

## Janitorial Services—23

**FM-72** Furnish all labor, materials and equipment to perform janitorial services including empty waste baskets, clean lavatories, sweep floors, machine buff tile floors, vacuum carpets, dust furniture, wash windows inside and outside, general house cleaning twice a year, shampoo carpets at the Pennsylvania State Police, Warren Station, Scott Run Road, Warren, PA 16365. Detailed work schedule and bid must be obtained from Facility Management Division, (717) 783-5484.

**Department:** State Police  
**Location:** Facility Management Division, Warren Station, Scott Run Road, Warren, PA 16365  
**Duration:** December 01, 1998 to June 30, 2001  
**Contact:** Deshawn Lewis or Joan Berkoski, (717) 783-5484

## Laboratory Services—24

**392482** Dental laboratory services: Dental laboratory is to provide the following services: Full and partial denture constructions, repairs of full and partial dentures, relining of full dentures. Institution will make original impression, will check bite and fit and will insert completed dentures.

**Department:** Public Welfare  
**Location:** Harrisburg State Hospital, Cameron and Maclay Streets, Harrisburg, PA 17105-1300  
**Duration:** July 1, 1999 through June 30, 2002, a period of 3 years  
**Contact:** Jack W. Heinze, Purchasing Agent III, (717) 772-7435

## Medical Services—29

**5206** Psychiatrist—professional medical work in the specialized care and treatment of the physically ill and/or mentally disabled. Psychiatric duties include interviewing patients, reviewing patients' records, writing physician's orders, writing progress notes, consulting with other physicians and treatment team staff, holding treatment team meetings, preparing reports and forms in accordance with current regulations and JCAHO standards.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** July 1, 1999—June 30, 2003  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

**5207** Podiatrist—responsible for all aspects of podiatry in the examination, diagnosis and treatment of minor ailments of the feet.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** July 1, 1999—June 30, 2003  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

**5209** Contractor to furnish equipment, supplies and materials to provide emergency oxygen rental services.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** July 1, 1999—June 30, 2003  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

**5213** Contractor/physician shall provide professional pulmonary medical tests to include professional interpretation/results of the testings on various employees in determining the employees' medical fitness to perform asbestos abatement work.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** July 1, 1999—June 30, 2003  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

**5210** Chief of psychiatry—professional medical work in the management, planning, coordination, evaluation and integration of psychiatric services at a State hospital including supervision of psychiatrists.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** July 1, 1999—June 30, 2003  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

**Inquiry No. 7643** Psychologist rehabilitation specialist.

**Department:** Public Welfare  
**Location:** Danville State Hospital, Route 11, P. O. Box 700, Danville, PA 17821-0700  
**Duration:** January 1, 1999—June 30, 2001  
**Contact:** Pamela Bauman, Purchasing Agent, (717) 271-4578

## Property Maintenance—33

**01** Cosmetically restore two full-size railroad locomotives (in situ), located at the Railroad Museum of Pennsylvania, Strasburg, PA. Scope of work to include removing vinyl lettering, pressure washing, spot blasting, rustproofing, priming and finishing, and painting. M1 Locomotive No. 6755 and Nickel Plate Locomotive No. 757. Please call the Railroad Museum for specifications.

**Department:** Historical and Museum Commission  
**Location:** Railroad Museum of Pennsylvania, P. O. Box 15, 300 Gap Road, Strasburg, PA 17579  
**Duration:** Indeterminate 1998—99  
**Contact:** Al Martin/David Dunn, (717) 687-8628

**5212** Contractor to provide all necessary labor/manpower, equipment, and the like, for tree, limb and stump removal.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** July 1, 1999—June 30, 2003  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

**4700-1** Janitorial and mowing service to be provided in accordance with Department specifications. All materials and labor shall be provided for a period of 12 months. Estimated days of janitorial service is 156 days. Estimated number of mowing needed is 20 each and the estimated hours of brush and weed trimming is 5 hours.

**Department:** Transportation  
**Location:** Bureau Highway Safety and Traffic Engineering, Sign Shop Distribution Center, 21st and Herr Streets, Harrisburg, PA 17103  
**Duration:** 1 year with options of 3 renewals  
**Contact:** Carl A. Marcocci, (717) 783-4340

**FM-71** Furnish all labor, materials and equipment for removal of snow, salting and cinderling from driveways and parking areas at the Hamburg Station, 90 Industrial Drive, Hamburg, PA 19526. Dates: December 01, 1998 to June 30, 1999; October 01, 1999 to June 30, 2000. Detailed work schedule and bid must be obtained from Facility Management Division, (717) 793-5484.

**Department:** State Police  
**Location:** Facility Management Division, Hamburg Station, 90 Industrial Drive, Hamburg, PA 19526  
**Duration:** December 01, 1998 to June 30, 2000  
**Contact:** Deshawn Lewis or Joan Berkoski, (717) 783-5484

**SP 401302** Upgrade and expand the kitchen facilities in the Old Forge residence at Michaux State Forest, Forest District No. 1.

**Department:** Conservation and Natural Resources  
**Location:** Facility Design and Construction, Michaux State Forest, Quincy Township, Franklin County, PA  
**Duration:** 90 days from Notice to Proceed  
**Contact:** Cory Gaiski, (717) 783-0760

**OVR 5-98** Snow removal services: Provide snow clearance and removal as needed upon 2" or more accumulation of snow. To be removed in accordance with the City of Allentown snow removal ordinances. To be performed prior to 7:30 a.m. or after 5:15 p.m. Snow removal areas include: 1 lot, approximately 34,344 square feet next to building; 1 lot, approximately 24,822 square feet catty-corner to the building at 2nd and Hamilton. One sidewalk around building and adjoining sidewalks measuring approximately 1,012 feet and one sidewalk around the parking lot at 2nd and Hamilton Streets measuring approximately 517 feet. Price to include application of salt.

**Department:** Labor and Industry  
**Location:** Allentown Job Center, 160 Hamilton Street, Allentown, Lehigh County, PA 18101  
**Duration:** November 1, 1998 through April 30, 2000  
**Contact:** Thomas Harp, Administrator, (610) 821-6441

## Real Estate Services—35

**86A** Lease Office Space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Public School Employees' Retirement System with 1,863 useable square feet of new or existing office space, with parking for three vehicles, in Johnstown, Southfork, Davidsville, Sidman and Westmont, Cambria County, PA. In areas where street or public parking is not available, an additional 25 parking spaces are required. Proposals due: October 26, 1998. Solicitation No.: 92732.

**Department:** General Services  
**Location:** Real Estate, 505 North Office Building, Harrisburg, PA 17105  
**Duration:** Indeterminate 1998—99  
**Contact:** Cynthia T. Lentz, (717) 787-4394, Ext. 3204

**060209** Provide full title searches, bring downs, settlements, disbursements and record deeds in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties. Bids must be received no later than 4:30 p.m. E.S.T. at 200 Radnor-Chester Road, St. Davids, PA 19087 on November 6, 1998.

**Department:** Transportation  
**Location:** Engineering District 6-0: Bucks, Chester, Delaware, Montgomery and Philadelphia Counties, PA  
**Duration:** Three years  
**Contact:** Transportation Engineering District 6-0, (610) 768-3027

**ITQ 358002** The PA Department of Transportation (PennDOT) is issuing an Invitation to Qualify (ITQ) to prequalify contractors interested in providing several categories of appraisal services including machinery and equipment. The initial qualification enrollment period will close November 23, 1998. To be considered for work under the initial enrollment, contractors must request and submit a completed application before November 23, 1998. Contractors may submit an application after November 23, 1998, but are encouraged to request an application now to meet that original enrollment date. To obtain qualification information, fax the following information to (717) 783-7971: Name and/or Company Name; Complete Address (no Post Office number if possible); Telephone and fax numbers. Please include in your request a reference to ITQ 358002. All appraisers must complete an application to be considered for future work with the Department. Past work does not automatically qualify you. Contractors who have recently been placed on any PennDOT bidders list will still be required to submit a new application for qualification.

**Department:** Transportation  
**Location:** Statewide (all counties)  
**Duration:** Up to 5 years  
**Contact:** Debra Gray, (717) 783-9671

## Sanitation—36

**6171** The contractor shall provide trash removal at the State Correctional Institution Greene. This shall require the contractor to provide for the handling of municipal and residential waste from the institution premises in a manner to comply with the Department of Environmental Protection and all other regulations for sanitation purposes.

**Department:** Corrections  
**Location:** State Correctional Institution Greene, 1030 East Roy Furman Highway, Waynesburg, PA 15370-8089  
**Duration:** July 1, 1999 through June 30, 2002  
**Contact:** Carol A. Teegarden, (724) 852-5515

**120R-022** Provide and maintain containers and remove refuse at specified intervals at Greene County Welcome Center on Interstate 79 Northbound at approximately the 6 mile marker.

**Department:** Transportation  
**Location:** District 12-0, Greene County Welcome Center, Interstate 79 Northbound approximately 6 mile marker  
**Duration:** 1 year, two 2-year renewals  
**Contact:** Michael D. Maurer, (724) 439-7374



**FOODWASTE-98-01** The contractor shall provide materials for containment as well as removal and recycling of food waste from the State Correctional Institution at Houtzdale.

**Department:** Corrections  
**Location:** State Correctional Institution Houtzdale, State Route 2007, P. O. Box 1000, Houtzdale, PA 16698-1000  
**Duration:** January 01, 1999 through June 30, 2000  
**Contact:** Diane K. Davis, Purchasing Agent II, (814) 378-1000

**PDA410** The collection, packing, transportation and disposal of pesticides located on farms and/or central collection sites. This is Phase 4 of the CHEMSWEEP Program.

**Department:** Agriculture  
**Location:** Statewide  
**Duration:** January 1, 1999 to December 31, 2001 with two 1-year options  
**Contact:** Michael Mesaris, (717) 787-5674

## Miscellaneous—39

**5214** Contractor shall provide maintenance/service on approximately 63 Canon typewriters which shall include any service calls during the period of the maintenance contract; no charge for travel time or parts and the equipment will receive one annual cleaning.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** July 1, 1999—June 30, 2003  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

**CTS-1998** Applications will be accepted for Commonwealth Student Assistance Program Training Providers in the following intermediate unit (IU) geographic areas: IU's 5, 8, 9, 10, 11, 13, 14, 16, 18, 19, 20, 21, 23, 25 and 29. One provider in each IU geographical area listed will be selected. To be eligible, agencies must be physically located within the boundaries of the IU geographical area. A mandatory preapplication meeting for potential applicants will be held November 10, 1998, at the Department of Education, 333 Market Street, Harrisburg, PA at 10 a.m. in Heritage Room B. An application packet and Guidelines for the Commonwealth SAP Training System are available upon request.

**Department:** Education  
**Location:** Various locations throughout Pennsylvania  
**Duration:** Unlimited, based on periodic training review and recertification  
**Contact:** Kim Swarner, (717) 783-6777

**RFP99-RSSE** Regional Summer Schools of Excellence (RSSE) programs must target gifted and/or talented youth, in elementary, middle and/or secondary levels. They must be enrichment programs offering curriculum and activities not ordinarily available in local schools during the school year. The programs may concentrate on a single discipline, an integration of disciplines, or be multidisciplinary in scope. Eligible RSSE grant applicants are: intermediate units; school districts (serving students in more than one district, except in large cities); colleges or universities; not for profit regional chapters or councils for the arts, culture and/or educational organizations; or consortia of two or more of the above. Applicants may apply for grants to launch new programs, or expand or update existing programs. This grant is highly competitive.

**Department:** Education  
**Location:** Various locations throughout the Commonwealth  
**Duration:** July—August, 1999  
**Contact:** Felicia D. Brown, (717) 783-5670

**X3142** Staffing and operation of the Recycling, Household Hazardous Waste and Waste Tire Hotline which provides up-to-date information on recycling, household hazardous waste minimization and management, and waste tire management in Pennsylvania.

**Department:** Environmental Protection  
**Location:** Harrisburg, PA  
**Duration:** December 1, 1998 through June 30, 2002 with option to renew  
**Contact:** Ally Hubler, (717) 787-2471

[Pa.B. Doc. No. 98-1639. Filed for public inspection October 2, 1998, 9:00 a.m.]

## DESCRIPTION OF LEGEND

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| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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GARY E. CROWELL,  
*Secretary*

**Contract Awards**

The following awards have been made by the Department of General Services, Bureau of Purchases:

<b>Requisition or Contract #</b>	<b>Awarded On</b>	<b>To</b>	<b>In the Amount Of</b>
6505-10	09/21/98	Mead Johnson Nutritional Div.	752,108.60
6505-10	09/21/98	Scientific Hospital Supplies dba/ SHS North America	266,911.00
6505-10	09/21/98	Bellco Drug Corp.	17,580.00
5999-01	09/21/98	Energy Source Distributing Co.	60,000.00
5999-01	09/21/98	Wesco Distributing, Inc.	20,000.00
5999-01	09/21/98	Graybar Electric Co., Inc.	10,000.00
5999-01	09/21/98	Colonial Electric Supply Co.	10,000.00
5999-01	09/21/98	Eugene Davids Co., Inc.	10,000.00
5999-01	09/21/98	Dauphin Electric Supply Co.	20,000.00
5999-01	09/21/98	Consolidated Electrical Dist.	10,000.00
5999-01	09/21/98	Schneck Electric Supply	10,000.00
5999-01	09/21/98	Power Battery Co.	10,000.00
5999-01	09/21/98	Knepper Associates	10,000.00
1008158-01	09/21/98	Ceramic Cooling Tower Co.	214,999.00

<b>Requisition or Contract #</b>	<b>Awarded On</b>	<b>To</b>	<b>In the Amount Of</b>
1081078-01	09/21/98	Clearview Printing Co., Inc.	3,120.00
1084238-01	09/21/98	Garden State Highway Products, Inc.	9,341.80
1092388-01	09/21/98	Rusty Palmer, Inc.	11,546.00
1106048-01	09/21/98	Hasco Tag Company	95,860.66
1109118-01	09/21/98	Bloomsburg Metal Company	21,860.00
1114078-01	09/21/98	Moore USA, Inc.	9,562.00
1127188-01	09/21/98	Moore USA, Inc.	9,819.00
1128198-01	09/21/98	The Standard Register Co.	26,450.00
1145148-01	09/21/98	Phillips Ford Sales	51,000.00
1927117-01	09/21/98	Barrier Technologies	185,000.00
7314080-01	09/21/98	Alling & Cory	14,284.20
8249320-01	09/21/98	Artco Equipment Sales, Inc.	109,932.00
8249320-02	09/21/98	Sealmaster Industries, Inc.	33,878.00
8504570-01	09/21/98	Diamond Tool and Fasteners, Inc.	35,870.58

GARY E. CROWELL,  
*Secretary*

[Pa.B. Doc. No. 98-1640. Filed for public inspection October 2, 1998, 9:00 a.m.]

# STATEMENTS OF POLICY

## Title 28—HEALTH AND SAFETY

### DEPARTMENT OF HEALTH

#### [28 PA. CODE CH. 9]

#### Managed Care Organizations; Quality Health Care Accountability and Protection

The Department of Health (Department) adopts the statement of policy in Chapter 9, Subchapter E (relating to quality health care accountability and protection for managed care plans) as set forth in Annex A.

##### *Background*

This statement of policy reflects laws governing managed care plans as defined in Article XXI of the Insurance Company Law of 1929 (40 P. S. §§ 991.2101—911.2193) (act). The Department shares responsibility with the Insurance Department to ensure that the act is implemented in an effective and cost-efficient manner on the effective date of January 1, 1999. The Department and the Insurance Department (Departments) have recognized the significant lead time necessary by the managed care industry to revise existing processing systems, amend subscriber contracts, enrollee literature and other materials, train internal staff regarding these new systems, and, when necessary or appropriate, to submit evidence of compliance for review or approval, or both. In addition, it is important that managed care plans operate their enrollee complaint and grievance systems in a similar manner, since consumers often have the right to transfer among managed care plans during open enrollment periods. The only feasible way to provide the guidance necessary in the short period of time is to adopt appropriate statements of policy. Major stakeholders who depend upon the guidance of the Department have supported the preliminary issuance of statements of policy to meet the tight deadlines imposed by the act.

It is the intent of the Department, in cooperation with the Insurance Department, to develop and publish regulations for comment in 1999, and to base those regulations, in part, upon the experience gained in implementing the act's provisions under the guidance of the statements of policy.

In providing guidance to managed care plans regarding the act compliance, the Department has concentrated on those areas most important to consumer enrollees of health care plans: (1) the new consumer complaint system; (2) the new consumer and provider grievance system; (3) the certification of utilization review entities to create a list to which consumer and provider grievance appeals may be assigned on a rotational basis for review, analysis and decision. Areas of compliance not addressed in this statement of policy will be addressed in the proposed regulations.

It is the intent of the Departments to publish their respective statements of policy regarding the act implementation in the same *Pennsylvania Bulletin* issue (*Editor's Note*: See 28 Pa.B. 5019 (October 3, 1998).), and to possibly follow publication with a jointly sponsored training session in Harrisburg for stakeholders to review the guidance provided in the statements and to receive and consider questions regarding implementation.

The Department notes that during the period July 1997 to December 1997 it convened seven managed care policy work groups with significant representation from major managed care stakeholders, including managed care plans, providers, purchasers and consumers. These work groups contributed greatly to the Department's understanding of the respective views of stakeholder groups regarding both broad policy and technical issues in managed care and managed care consumer protection. Further, the work groups provided significant input to the Department regarding public policy and regulatory issues in managed care and useful recommendations, many of which were incorporated into the act and this statement of policy.

##### *Persons and Entities Affected*

The managed care plan provisions of the act, effective January 1, 1999, affect a significant portion of the 5 million Pennsylvanians enrolled in managed care plans in the Commonwealth and managed care plans themselves by requiring adoption and implementation of new procedures for addressing consumer complaints and consumer and provider grievances. The act will affect the thousands of providers who participate in managed care plans by providing them with an opportunity to file grievances, with the consent of the patient enrollee, and to have explicit standards applied to the utilization review of covered health care services. Finally, the act will affect managed care plans and licensed insurers which will have to bring their existing utilization review systems into compliance with the operational standards for utilization review programs, and independent utilization review entities required to obtain or electing certification under the act. This statement of policy, by providing guidance on uniform implementation of the act will affect these same parties, but only to the extent that the statement clarifies operational procedures for successful implementation of the act.

##### *Form and Effect*

This statement of policy provides guidance regarding the standards to be utilized by the Department in determining managed care plan compliance with of the act, and for certifying utilization review entities. This statement of policy does not constitute a rule or regulation entitled to the force and effect of law.

##### *Companion Statement of Policy*

This statement of policy is issued in conjunction with a companion statement of policy issued by the Insurance Department. Managed care plans covered by the act are subject to regulation by both the Department and the Insurance Department. Accordingly, both statements of policy must be consulted to gain a clear understanding of the implementation requirements for managed care plans under the act.

##### *Fiscal Impact And Paperwork Requirements*

The Department does not anticipate that there will be significant fiscal impact and paperwork requirements after adoption of this statement of policy, since it provides only interim guidance to promote the successful implementation of the act requirements until regulations can be adopted. There will be both a fiscal impact (an increase in operational expenses) and a change in paperwork requirements for the Commonwealth in connection with review of initial filings and submissions from man-

aged care plans. The fiscal impact and changes in paperwork requirements result from the requirements of the act itself.

The Department will establish an initial utilization review certification fee, as well as a renewal fee for utilization review certifications, in subsequent regulations.

#### *Contact Person*

Persons desiring more information regarding this statement of policy should contact, Thomas J. Chepel, CLU, CPCU, Director, Division of Certification, Bureau of Managed Care, Room 1030 Health & Welfare Building, P. O. Box 90, Harrisburg, Pa 17108-0090, (717) 787-5193. Any written comments received will be considered by the Department in the preparation of its regulations. Persons with disabilities may submit information requests regarding the statement of policy in alternative formats, such as by audio tape, braille or by using TDD: (717) 783-6514. Persons with a disability requesting alternative forms (that is, large print, audio tape, braille) may contact Mr. Chepel so that he may make the necessary arrangements.

#### *Effective Date*

This statement of policy is effective January 1, 1999. Upon promulgation of regulations, this statement of policy will be rescinded.

DANIEL F. HOFFMANN,  
*Secretary*

(*Editor's Note:* The regulations of the Department, 28 Pa. Code Chapter 9, are amended by adding a statement of policy in §§ 9.501—9.519 (relating to quality health care accountability and protection) to read as set forth in Annex A.)

**Fiscal Note:** 10-153. No fiscal impact; (8) recommends adoption.

### **Annex A**

## **TITLE 28. HEALTH AND SAFETY**

### **CHAPTER 9. MANAGED CARE ORGANIZATIONS**

#### **Subchapter E. QUALITY HEALTH CARE ACCOUNTABILITY AND PROTECTION—STATEMENT OF POLICY**

Sec.	
9.501.	Applicability and purpose.
9.502.	Definitions.
9.503.	Enrollee complaint systems.
9.504.	Enrollee and provider grievance systems.
9.505.	Reporting provisions for complaint and grievance systems.
9.506.	Alternative dispute resolution systems for external grievance.
9.507.	Department review of complaint and grievance systems.
9.508.	Transition between former grievance system and new complaint and grievance systems.
9.509.	Application of enrollee complaint and enrollee and provider grievance systems to self-funded plans and nonmanaged care plans.
9.510.	Fees for initial certification and renewal of utilization review certification.
9.511.	Content of an application for certification as a utilization review entity.
9.512.	Department review and approval of a certification request.
9.513.	Nationally recognized accrediting bodies.
9.514.	Managed care plan and licensed insurer compliance with utilization review requirements.
9.515.	Continuity of care and expanded care provisions.
9.516.	Confidentiality.
9.517.	Provider credentialing.
9.518.	Accessibility and availability.
9.519.	Access for special needs populations.

#### **§ 9.501. Applicability and purpose.**

(a) This subchapter establishes the guidelines which the Department will utilize to determine managed care

plan and utilization review entity compliance with the act. It sets forth the Department's expectations regarding act implementation until formal regulations are adopted. This subchapter applies to each health plan meeting the definition of "managed care plan" contained in the act.

(b) This subchapter is effective January 1, 1999, and applies and provides compliance guidance to assist managed care plans, licensed insurers and utilization review entities subject to the act.

(c) The terms and conditions of group and individual contract renewals and new business written by managed care plans on or after January 1, 1999, shall conform to the act.

#### **§ 9.502. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—Article XXI of The Insurance Company Law of 1921 (40 P. S. §§ 991.2101—991.2193) as added by Act No. 68 of 1998 regarding quality health care accountability and protection.

*Department*—The Department of Health of the Commonwealth.

*Gatekeeper*—A primary care provider selected by an enrollee at the time of enrollment or appointed by a health plan from whom an enrollee shall obtain covered health care services or a referral or approval for covered, nonemergency health services as a condition for the payment of the highest level of benefits/services available under the plan.

*Managed care plan*—

(i) A health care plan that:

(A) Uses a gatekeeper to manage the utilization of health care services.

(B) Integrates the financing and delivery of health care services to enrollees by arrangements with health care providers selected to participate in the plan on the basis of specific standards.

(C) Provides financial incentives for enrollees to use the participating health care providers in accordance with procedures established by the plan.

(ii) A managed care plan includes health care arranged through an entity operating under any of the following:

(A) Section 630 of the Insurance Company Law of 1921 (40 P. S. § 764a).

(B) The Health Maintenance Organization Act (40 P. S. §§ 1551—1568).

(C) The Fraternal Benefit Societies Code (40 P. S. §§ 1141-101—1141-905).

(D) 40 Pa.C.S. Chapter 61 (relating to hospital plan corporations).

(E) 40 Pa.C.S. Chapter 63 (relating to professional health services plan corporations).

(iii) The term includes an entity, including a municipality, whether licensed or unlicensed, that contracts with or functions as a managed care plan to provide health care services to enrollees.

(iv) The term does not include an indemnity arrangement which is primarily fee for service or an ancillary health care plan, including those which provide coverage exclusively for dental or vision services, or benefits supplementing benefits payable under the Federal Medicare or Civilian Health And Medical Program of the Uniformed Services (CHAMPUS).

(v) The term does not include "passive gatekeeper" preferred provider organizations (PPOs). A passive gatekeeper includes plans in which enrollees are not required to preselect a particular primary care physician, but require, as a condition for receipt of a higher level of benefits or reimbursement level, or both, that an enrollee receive care from or a referral from a participating preferred primary care physician. See 31 Pa. Code § 152.102 (relating to definitions).

### **§ 9.503. Enrollee complaint system.**

(a) The act gives the Department and the Insurance Department shared oversight over the enrollee complaint process.

(b) A complaint is a dispute or objection regarding a participating health care provider, coverage, including contract exclusions and noncovered benefits as well as the operations or management policies of a managed care plan. Examples of issues constituting complaints which will be handled by the Department, include:

(1) Quality of care or quality of service issues.

(2) Denial of payment for treatment by a nonparticipating provider for failure to obtain a necessary referral or to utilize a participating provider when the enrollee alleges that the reason for seeking the care was inadequate care by the managed care plan, primary care provider or participating providers.

(c) The following applies to filing of complaints.

(1) An enrollee may file a written or oral complaint with the plan's internal complaint system as well as written data or other information in support of the complaint.

(2) An enrollee should indicate the remedy or corrective action being sought.

(3) Second level review.

(i) It is recommended that the one-third membership of a plan's internal second level review committee who are not plan employees include actual enrollees, or representatives of plan enrollees, such as employee benefits administrators, collective bargaining agents, consumer advocates or similar individuals.

(ii) The deliberations of the plan's second level review committee, including the enrollee's comments and written submissions, should be transcribed or summarized and maintained as part of the complaint record.

(iii) Attendance at the second level review hearing should be limited to members of the review committee, the enrollee or enrollee's representative, the enrollee's provider or applicable witnesses, and appropriate plan representatives. All persons attending and their respective roles at the hearing should be identified for the enrollee.

(iv) The second level review should provide reasonable flexibility in terms of time and travel distance when scheduling a hearing to facilitate the enrollee's attendance. If an enrollee cannot appear in person at the informal hearing, the enrollee should be provided the opportunity to communicate with the review committee by telephone or other appropriate means.

(v) The notice of the second level review decision shall include the basis for the decision and the procedure for appealing the decision to the Department or the Insurance Department, including the address and phone num-

bers of the Departments. The decision of the second level review committee should be binding on the plan unless appealed by the enrollee.

(d) The following applies to Department review of a complaint:

(1) An enrollee appeal of a decision by a managed care plan's second level review committee may be directed to either the Department or the Insurance Department. Appeals directed to the Department should include, at a minimum, the enrollee's name, address and telephone number, identification of the managed care plan, the enrollee's plan ID number and a brief description of the issue being appealed, and should be sent to:

Bureau of Managed Care  
Department of Health  
Attention: Complaint Appeals  
P. O. Box 90  
Harrisburg, Pennsylvania 17108-0080

(2) Upon receipt of the appeal, the Department will verify that the appeal was submitted within 15 days from the enrollees' receipt of the notice of the decision by the managed care plan's second level review committee. The Department will review the complaint to ensure that it involves a matter appropriate for review by the Department. If the Department believes that the appeal more appropriately relates to issues and matters under the jurisdiction of the Insurance Department—for example, an issue involving interpretation of a coordination of benefits provision, the Department will notify the enrollee in writing of its finding and promptly transmit the appeal to the Insurance Department for consideration.

(3) Upon receipt of the appeal, the Department will request the complete complaint case file, including, but not limited to, records from the initial and second level review, including hearing transcript or summary, medical records, if appropriate, and other case materials be forwarded within 15 business days to the Department. The Department may request additional information from the managed care plan, enrollee or participating providers involved in the complaint. The enrollee, managed care plan or provider may submit additional materials relating to the appeal.

(4) The enrollee may be represented by an attorney or other individual before the Department. The Department will make the decision based on the written record.

(5) The Department may take any of the following actions:

(i) Request, for specified reasons, that the managed care plan's second level review reconsider the complaint.

(ii) Request an independent review by a consulting provider or certified utilization review entity, if the complaint involves the exercise of clinical judgement.

(iii) Issue a recommendation to the managed care plan and enrollee regarding the complaint.

(6) If the plan determines that additional information from the enrollee or the provider justifies reconsideration and resolution of a complaint, the resolution shall terminate a review by the Department.

(7) If the Department determines that the complaint reflects a violation of the act by the managed care plan, it may proceed with an enforcement action authorized by the act.

### **§ 9.504. Enrollee and provider grievance system.**

(a) The act sets forth a procedure to deal with grievances by enrollees and health care providers.

(b) A grievance is a request by an enrollee or a health care provider, with the written consent of the enrollee, to have a managed care plan or utilization review entity review the denial of a health care service based on medical necessity and appropriateness. This includes cases in which the managed care plan: disapproves full or partial payment for a requested health service; approves the provision of a requested health care service for a lesser scope or duration than requested; or disapproves payment of the provision of a requested service but approves payment for the provision of an alternative health care service.

(1) If it is unclear to the enrollee or health care provider whether the issue in dispute is a complaint or a grievance, it is recommended that the plan classify the issue in dispute as a complaint or grievance.

(2) The primary test of determining whether a dispute is a complaint or a grievance is whether medical necessity is the primary issue in dispute. For a denial to be a grievance, the requested service or treatment shall clearly be covered under the contract and must be denied because of the managed care plan's determination that the service or treatment is not medically necessary in accordance with the definition of medical necessity found in the enrollee's contract. Examples of issues considered to be grievances, include:

(i) Denial of an emergency claim on the basis that the condition did not meet the definition of an emergency.

(ii) Denial of a request by an enrollee for a referral to a nonparticipating provider with special skills, knowledge, experience or reputation regarding the performance of a needed procedure or treatment, on the basis that the procedure or treatment can be rendered appropriately by a participating provider.

(iii) Denial of a request for an organ transplant on the basis that the existence of complicating medical factors and the patient's condition make a transplant inappropriate.

(iv) Denial of a prescription drug on the basis that the drug is not part of the managed care plan's approved formulary.

(v) Denial of a request for treatment at or by a nonparticipating provider on the basis that a participating provider is available to provide the treatment or service.

(vi) Discharge from a facility on the basis that the continued stay is no longer medically necessary.

(vii) Refusal to continue to pay for skilled nursing facility care on the basis that continued care is not medically necessary at the skilled nursing care level, but rather is custodial in nature.

(viii) Denial of a referral to a specialist.

(c) The following applies to second level review of grievances:

(1) The deliberations of the plan's second level grievance review committee, including the enrollee's or provider's comments and written submissions, should be transcribed or summarized and maintained as a part of grievance record.

(2) The second level review should provide reasonable flexibility in terms of time and travel distance when scheduling a hearing to facilitate the enrollee's or provider's attendance. If the enrollee or the provider cannot appear in person, the enrollee or provider should be given

the opportunity to communicate with the review committee by telephone or other means.

(3) The written notice of a decision by the second level grievance review committee denying a health care service should include the basis and clinical rationale for the decision and the procedure for filing an external grievance.

(d) The following applies to external grievances:

(1) The managed care plan shall acknowledge receipt of an external grievance in writing to the enrollee or the health care provider, the utilization review entity that conducted the internal grievance review and the Department.

(2) In addition to the information required under section 2162 of the act (40 P.S. § 991.2162), the plan shall submit its contractual definition of "medical necessity" and any clinical criteria utilized by the plan in making its initial decision.

(3) To avoid duplication of grievances and related expenses, the provider filing a grievance with the written consent of the enrollee should be the primary provider (that is, the provider who manages the treatment and orders care) of the disputed services to the enrollee. If the external grievance is ultimately decided in favor of the enrollee or provider, all related disputed claims arising from that incident or service should be paid by the managed care plan. For example, if the enrollee grants written consent to a hospital to appeal a denial of services on the basis that a true emergency did not exist, separate grievance appeals need not be filed by related providers of emergency care which are covered services and which are medically necessary and appropriate, such as the ambulance company who transported the enrollee, the independent physician group which employs the ER physician, the independent radiology and laboratory medicine physicians providing the professional component of interpreting test results, and the like.

(e) The following applies to the processing of a grievance appeal by the Department:

(1) Requests for assignment of a certified utilization review entity to conduct an external grievance should be addressed to:

Bureau of Managed Care  
Department of Health  
Attention: Grievance Appeals  
P. O. Box 90  
Harrisburg, Pennsylvania 17108-0080

(2) The request should include the following basic information:

(i) An identification of the managed care plan, the enrollee/patient and the health care provider.

(ii) Whether the external grievance is being filed by the enrollee or a health care provider with written consent of the enrollee.

(iii) The plan ID (including group number and enrollee ID number).

(iv) The date of receipt of the external grievance by the managed care plan from the enrollee or health care provider.

(v) A brief (few line) description of the medical necessity/claim denial being appealed.

(vi) The filing fee, if any, the enrollee has been charged by the managed care plan.

(3) Upon receipt of an external grievance, the Department will assign on a rotational basis a utilization review entity to conduct the review within 2 business days of receiving the request. The Department may notify the managed care plan of the selection of the utilization review entity selected by means of telephone or facsimile machine, with written follow-up notification. Upon receipt of notification from the Department, the managed care plan should notify the enrollee or health care provider and utilization review entity which conducted the internal grievance review. The Department may assign the external grievance a uniform tracking number, which should be utilized by the plan, external utilization review entity, enrollee and provider to communicate with or report to the Department.

(4) If the Department fails to select a utilization review entity within 2 business days of receipt of the external grievance, the managed care plan may designate a certified utilization review entity to conduct the review. No certified utilization review entity affiliated, directly or indirectly, with the plan may be selected to review the external grievance.

(5) Upon notification of the utilization review entity selected to conduct the external grievance, the managed care plan, utilization review entity, provider or enrollee should have 2 business days to object to the assignment of the utilization review entity on the basis that the entity has a conflict of interest, for example, that the review entity is a subsidiary or affiliate of the managed care plan. The Department will review the objection within 5 business days and either uphold the assignment of the utilization review entity, or assign the review to the next utilization review entity on the rotational schedule.

(6) A managed care plan should provide to the Department the name, title and phone number of a primary and alternative external grievance coordinator with whom the Department can communicate regarding the assignment of utilization review entities to undertake grievance reviews.

(7) If additional information provided by the enrollee or provider during the external grievance results in a reconsideration of the plan's denial on the basis of medical necessity, and the plan grants coverage, the external grievance shall be terminated upon notification to the utilization review entity.

(f) The following applies to the utilization review entity processing of a grievance review:

(1) The utilization review entity shall certify that the external grievance decision was made by one or more physicians or approved licensed psychologists, as specified in the act, and shall indicate whether the health care service denied by the internal grievance process is medically necessary and appropriate under the terms of the plan.

(2) In reviewing a grievance relating to emergency services, the utilization review entity should utilize the emergency services standards of the act and the definitions of medical necessity and emergency in the enrollee's current certificate of coverage.

#### **§ 9.505. Reporting provisions for complaint and grievance systems.**

(a) A managed care plan should maintain records of first and second level complaint and grievance decisions, including expedited reviews. A managed care plan should include in its quarterly and annual reports to the Department data regarding complaints and grievances during

that reporting period. A managed care plan should periodically analyze, and make available to the Department, issues involved in complaints and grievances to identify potential areas for improvement or increased disclosure. Data which plans should submit to the Department in routine reports include:

(1) The total number of formal complaints filed, decided and pending, in the reporting period.

(2) The total number of complaints at the first internal committee review:

(i) Settled in favor of the plan.

(ii) Settled in favor of the enrollee.

(3) The total number of complaints at the second level internal review:

(i) Settled in favor of the plan.

(ii) Settled in favor of the enrollee.

(4) The total number of complaints appealed to the Commonwealth: (if known, to the Department; if known, to the Insurance Department).

(5) The total number of formal grievances filed, decided and pending, in the reporting period.

(6) The total number of grievances at the first internal review level:

(i) Settled in favor of the plan.

(ii) Settled in favor of the enrollee.

(iii) Settled in favor of the provider.

(7) The total number of grievances at the second level internal review:

(i) Settled in favor of the plan.

(ii) Settled in favor of the enrollee.

(iii) Settled in favor of the provider.

(8) The total number of internal expedited reviews conducted:

(i) Settled in favor of the plan.

(ii) Settled in favor of the enrollee.

(iii) Settled in favor of the provider.

(b) Reports should be filed with the Department as follows:

(1) *Quarterly reports.* 45 days after the last day of the quarter (such as, the report for the 1st quarter covering January, February and March should be filed no later than May 15th).

(2) *Annual reports.* No later than April 1st of the calendar year following the calendar year being reported.

#### **§ 9.506. Alternative dispute resolution systems for external grievance.**

(a) A managed care plan may submit for Department review and approval a system for dispute resolution as an alternative to the external grievance to be included in contracts between the plan and its participating providers. The alternative may apply only to grievances filed by providers and may include a provision that a decision from the alternative dispute resolution system shall be final and binding on both the managed care plan and provider.

(b) A proposed alternative dispute resolution system shall be impartial and include specific time limitations to initiate appeals, receive written information, conduct hearings and render decisions.



**§ 9.507. Department review of complaint and grievance systems.**

A managed care plan should file with the Department and maintain an updated detailed written description of its enrollee complaint and enrollee and provider grievance systems.

**§ 9.508. Transition between former grievance system and new complaint and grievance systems.**

(a) Prior to January 1, 1999, health maintenance organizations and gatekeeper preferred provider organizations (including "point-of-service" plans) were required to establish, operate and maintain a consumer grievance system complying with Department requirements in § 9.73 (relating to subscriber grievance systems), and various technical advisories and guidelines. To assure an orderly transition to the new systems, group and individual contract renewals and new business written by managed care plans on or after January 1, 1999, shall conform to the act, and the following:

(1) Any enrollee complaint or grievance filed prior to the first renewal date of the enrollee's managed care plan contract on or after January 1, 1999, should be processed under the enrollee grievance system contained in the enrollee's contract.

(2) Any complaint or grievance filed by an enrollee, or a provider with the written consent of the enrollee, on or after the first renewal date of the enrollee's managed care plan contract in 1999 should be processed in accordance with the complaint and grievance systems established under the act.

(b) A managed care plan may voluntarily comply with the complaint and grievance procedures under the act for all complaints and grievances filed on or after January 1, 1999, if authorized by the enrollee contract.

**§ 9.509. Application of enrollee complaint and enrollee and provider grievance systems to self-funded plans and nonmanaged care plans.**

(a) The Department encourages managed care plans that administer, through their provider network and gatekeepers, the managed care programs of self-funded insurers under the Federal Employee Retirement Income Security Act (ERISA) to voluntarily extend the new complaint and grievance systems to self-funded enrollees.

(i) The self-funded group may elect to treat any grievance appeal decision rendered by a utilization review entity as: binding, unless appealed to a court of competent jurisdiction; or as advisory.

(ii) An appeal from the plan's second level complaint review or second level grievance review may be to the self-funded group itself.

(b) Some health care plans/insurers, particularly those associated or affiliated with health maintenance organizations and gatekeeper PPOs, voluntarily extended the Department's consumer grievance system to enrollees in health benefits plans without gatekeepers. Effective January 1, 1999, these grievance systems shall be amended to remove right of appeal to the Department, insofar as the appeal is inconsistent with the act.

(c) It is the Department's expectation that a managed care plan will apply its Department approved quality improvement system to all enrollees, including those enrolled in a self-funded employee benefit plan administered by the managed care plan, to protect enrollees from

the risk of inadequate or poor quality care arising out the use of gatekeepers, financial incentives and limited provider networks.

**§ 9.510. Fees for initial certification and renewal of utilization review entities.**

Fees will be established in regulation for certification and renewal of utilization review entities.

**§ 9.511. Content of an application for certification as a utilization review entity.**

(a) A utilization review entity seeking certification, including an integrated delivery system as defined in § 9.402 (relating to definitions) performing utilization review under a delegation agreement from a managed care plan, shall submit two copies of an application to the Department at the following address:

Bureau of Managed Care  
Pennsylvania Department of Health  
Attention: Utilization Review Certification  
P. O. Box 90  
Harrisburg, Pennsylvania 17108-0090

(b) A utilization review entity operating in this Commonwealth on or before January 1, 1999, shall comply with the act effective January 1, 1999, but need not file an application for certification until January 1, 2000. To avoid backlogs and time delays which might arise if all entities waited until January 1, 2000, to file, entities are encouraged to apply for certification as early in 1999 as possible. A utilization review entity will not be placed on the Department's list of certified utilization review entities for external grievances unless the entity is certified. Entities desiring to be placed on the rotational list to hear external grievances should file their applications as soon as possible after adoption of this subchapter. A new utilization review entity not operating in this Commonwealth on or before January 1, 1999, may not operate until it receives a certification from the Department.

(c) The application shall contain the following:

(1) The name, address and telephone number of the entity as it should appear on the Department's official list of certified utilization review entities.

(2) The name, title, address and telephone number of a primary and at least one backup designee with whom the Department will communicate regarding assignment of external grievances and other issues.

(3) The name, title, address and telephone number of a primary contact responsible for answering any Department questions regarding the application.

(4) Information relating to its organization, structure and function, including:

(i) The location of the principal office handling utilization review in this Commonwealth.

(ii) The articles of incorporation and bylaws, or similar documents, regulating the internal affairs of the applicant.

(iii) If the applicant is publicly held, the name of each owner of more than 5% of the shares of the corporation.

(iv) A chart showing the internal organization of the applicant's management and administrative staff (which the applicant may designate as "confidential and proprietary" and not subject to public disclosure).

(v) The name and type of business of each corporation, affiliate or other organization that the applicant controls, the nature and extent of the affiliation or control and a

chart or list clearly identifying the relationships between the applicant and affiliates (which applicant may designate as "confidential and proprietary" and not subject to public disclosure).

(vi) Biographical information about officers, directors and executives (which the applicant may designate as "confidential and proprietary" and not subject to public disclosure).

(5) A listing of each managed care plan in this Commonwealth for which the entity currently conducts utilization review.

(6) A disclosure of any potential conflict of interest which would preclude its review of an external grievance—for example, ownership or affiliation with a competing managed care plan or health insurance company.

(7) A description of the:

(i) Provision of toll-free telephone access.

(ii) Maintenance of a telephone answering service or recording system during nonbusiness hours.

(iii) Ability to respond to each telephone call received as required by the act.

(8) A description of procedures for protecting the confidentiality of medical records and certification that it will comply with the confidentiality provisions of the act and all other applicable State and Federal laws.

(9) A description of its procedures to ensure that a health care provider is able to verify that an individual requesting information on behalf of the managed care plan is a legitimate representative of the utilization review entity/plan.

(10) A description of its ability, including staffing and resources, to meet the time frames for decisions specified in the act.

(11) A certification that utilization review decisions resulting in a denial shall be made by a licensed physician or approved licensed psychologist, and that any utilization conducted not resulting in a denial shall be made by personnel having current licenses in good standing or other credentials, without restrictions, from the appropriate agency.

(12) A description of its ability to notify the health care provider of additional facts or documents required to complete the utilization review within 48 hours of receipt of the request for review.

(13) A description of its ability to maintain a written record of utilization review decisions adverse to enrollees for at least 3 years, including a detailed justification and all required notifications to the health care provider and enrollee.

(14) A certification that compensation from a managed care plan to a utilization review entity, employee, consultant or other person performing utilization review on its behalf does not contain incentives, direct or indirect, to approve or deny payment for the delivery of any health care service.

(15) An indication that it is willing and able to participate on a rotational basis in an external grievance.

(16) A certification that all external grievances will be reviewed in accordance with the act.

(17) If the utilization review entity proposes to utilize licensed psychologists to perform utilization reviews for behavioral health care services within the psychologists' scope of practice, a request for approval to do so. The

request shall include a description of the credentialing criteria and process the entity shall utilize to ensure that behavioral health service reviewed by the psychologist falls within the psychologist's scope of practice; the psychologist's clinical experience is sufficient to review specific behavioral health services; and any other standards the entity has adopted for approval of a licensed psychologist. The request shall also certify that licensed psychologists will not review the denial of payment for a health care service involving inpatient care or a prescription drug.

(18) Evidence of any approval, certification or accreditation received by a Nationally recognized accrediting body in the area of utilization review.

(19) A description of its ability to maintain records regarding grievances that result in a decision adverse to the enrollee for at least 3 years and to provide records and other data to the Department upon request.

(20) Its agreement to provide information to the Department upon request regarding fees charged to perform utilization reviews to allow the Department to respond to a complaint by a managed care plan, enrollee or provider that the fees of a particular certified utilization review are excessive. This information shall be proprietary and confidential.

(21) If the plan is currently operating in this Commonwealth, a disclosure of how long it has been operating, and a list of three clients for which it has conducted utilization review in this Commonwealth, including the name, address, position and telephone number of contact persons for each client. The Department may contact these references for an assessment of the applicant's past performance, particularly its ability to meet the review times for prospective, concurrent and retrospective utilization review under the act.

(22) If the entity desires to be placed on the rotational list to receive and decide external grievances a description of its ability to:

(i) Receive and decide any and all external grievances.

(ii) Receive and decide only behavioral health grievances (mental health and drug and alcohol related medical necessity issues).

(23) If the entity desires to be placed on the rotational list to decide external grievances, a description of its ability and agreement to maintain the information obtained in the review of the grievances, including outcomes, in a manner that is confidential and unavailable to affiliated entities or persons who may be direct or indirect competitors to the managed care plan being reviewed.

#### **§ 9.512. Department review and approval of a certification request.**

(a) The Department will review the application for certification as a utilization review entity. If the Department finds that the application meets the requirements of the act, it will approve it. If the Department finds deficiencies, it will notify the applicant identifying the changes required to bring the application into compliance. If the Department takes no action within 45 days of receiving the certification application, or a requested revision, the application shall be deemed to have been approved.

(b) Upon certification, the Department will add the name of the utilization review entity to its rotational list of entities to conduct external grievances, if requested by the entity.

(c) The Department may utilize site visits or a Nationally recognized accrediting body acceptable to the Department to determine an applicant's ability to comply with the act.

(d) The Department may utilize the following to verify a certified utilization review entity's continuing compliance with the act:

(1) Periodic onsite reviews by the Department.

(2) Accreditation by a Nationally recognized accrediting body acceptable to the Department.

(3) If the entity is not accredited by a Nationally recognized accrediting body acceptable to the Department, an onsite inspection by an accreditation body acceptable to the Department, reimbursed directly by the entity.

(e) The initial certification is valid for 3 years, unless certification is rescinded or restricted prior to that date for cause by the Department. Verification of compliance with the act is required to receive certification renewal.

#### **§ 9.513. Nationally recognized accrediting bodies.**

(a) The Department will identify and maintain a list of Nationally recognized accrediting bodies whose standards meet or exceed the requirements of the act regarding utilization review. The list will be public information.

(b) A utilization review entity or managed care plan seeking to demonstrate compliance with the act may submit documentation of its accreditation by a Nationally recognized accrediting body for consideration by the Department as evidence of compliance with the act.

(c) The Department may recognize the standards of a Nationally recognized accrediting body whose standards partially meet the requirements of the act to certify a utilization review entity. The Department will require the utilization review entity or managed care plan to submit evidence of compliance with the act not met by the standards of the accrediting body. The Department may permit an accrediting body qualified under subsection (d) to verify compliance with the act not met by the standards of an accrediting body at the expense of the entity seeking certification. An accrediting body performing a verification of compliance under this subsection shall submit a report certifying compliance with the act.

(d) The Department may qualify an accrediting body that has standards that meet or exceed the act to assist the Department to enforce the act with regard to entities performing utilization review for managed care plans, to include compliance monitoring and certification renewal, at the entity's expense.

(e) A utilization review entity that is not accredited by a Nationally recognized accrediting body shall verify compliance with the act through an audit performed by a qualified accrediting body at the entity's expense or through an onsite verification by the Department. For a utilization review entity that maintains its records and other information at a location outside of this Commonwealth, a qualified accrediting body shall be utilized for certification and renewal verifications.

#### **§ 9.514. Managed care plan and licensed insurer compliance with utilization review requirements.**

(a) Managed care plan compliance with the utilization review requirements of the act will be verified by the Department during the course of its routine compliance monitoring of plans, including, but not limited to, external quality reviews required 1 year after licensure and every 3 years thereafter.

(b) Licensed insurers performing utilization review services for or on behalf of managed care plans within this Commonwealth shall file with the Department evidence of compliance with the standards and procedures in section 2152 of the act (40 P. S. § 991.2152), at the same time as the annual statement filing with the Insurance Department, beginning with the annual statement for Fiscal Year 1999.

#### **§ 9.515. Continuity of care and expanded care provisions.**

(a) A managed care plan shall adopt and maintain procedures by which an enrollee with a life-threatening, degenerative or disabling disease or condition shall be permitted to receive either a standing referral to a specialist with clinical expertise in treating the disease or condition, or designation of a specialist to assume responsibility to provide and coordinate the enrollee's primary and specialty care, subject to the plan's utilization management requirements and plan criteria. The managed care plan should make a decision regarding the referral within 30 days of the receipt of the enrollee's request. An enrollee may appeal the decision through the enrollee complaint process.

(b) Whenever the plan is required to pay for care provided to enrollees by a nonparticipating provider under section 2117 of the act (40 P. S. § 991.2117), the plan may require a nonparticipating health care provider to:

(1) Accept the plan's payment as payment in full for covered services, less any permitted deductibles or copayments.

(2) Require that all referrals for specialty care, diagnostic testing and related services be made to participating providers.

(3) Require that all nonemergency inpatient care be provided at a participating hospital or facility.

(4) Require that the provider provide copies of the patient's medical records to the plan or the enrollee's participating primary care physician, or both.

(5) Require that plan procedures requiring precertification or prior approval of specified nonemergency services or procedures be met.

(c) The plan should provide affected enrollees and affected nonparticipating providers with written disclosure of the requirements which shall be met for the plan to be responsible for payment for services rendered by the provider.

#### **§ 9.516. Confidentiality.**

A managed care plan and a certified utilization review entity should adopt and maintain procedures to ensure that all identifiable information regarding enrollee health, diagnosis and treatment is adequately protected and remains confidential in compliance with the act and other applicable Federal and State laws and professional ethical standards. A copy of the procedures shall be filed with the Department within 30 days of adoption.

#### **§ 9.517. Provider credentialing.**

(a) A managed care plan should file a copy of its written credentialing process in the form of a separate and distinct document (even though it may be incorporated into a larger quality improvement plan) with the Department for approval. The process should include written criteria and procedures including:

(1) Qualifications which a provider shall meet to be accepted as a participating provider.

(2) Information which a provider shall provide as a part of the application process to demonstrate compliance with required qualifications.

(3) Requirements that a provider shall meet to be credentialed such as staff privileges at a participating hospital, board certification, or onsite review of office or medical records by the plan.

(4) Restrictions which a plan may place on the provider's status as a participating provider.

(5) Periodic recredentialing requirements.

(6) Termination procedures including any internal appeal procedures available to participating providers.

(7) Credentialing decisions to be made by a committee composed of practicing providers.

(b) A managed care plan may submit evidence of accreditation by the National Committee for Quality Assurance (NCQA) or other Nationally recognized accrediting body acceptable to the Department as evidence of compliance with this act.

(c) A managed care plan may refuse to accept applications for participation and credentialing if the plan believes it has sufficient providers of a given specialty in a given geographic area, provided that the refusal is done in a nondiscriminatory manner.

#### **§ 9.518. Accessibility and availability.**

The Department has, as a matter of practice, reviewed each applicant managed care plan's initial service area, and any expansions thereof, to ensure that the plan has adequate numbers of providers, distributed by specialty and geography, to provide covered health care services to enrollees in an accessible and available manner. The Department has utilized the informal standard for accessibility/availability that hospitalization services and primary care and frequently utilized specialty services be available within 20 miles/20 minutes in urban areas, and 30 miles/30 minutes in rural areas. The Department intends to continue to review initial and service area expansions, and to formalize the process and standards through adoption of regulations.

#### **§ 9.519. Access for special needs populations.**

A plan shall file with the Department its policies, plans and procedures for meeting the act's requirement to ensure that there are participating health care providers that are physically accessible to people with disabilities and can communicate with individuals with sensory disabilities in accordance with Title III of the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12181—12189), and a description of how the plan addresses the needs of non-English-speaking enrollees.

[Pa.B. Doc. No. 98-1641. Filed for public inspection October 2, 1998, 9:00 a.m.]

## **Title 31—INSURANCE**

### **INSURANCE DEPARTMENT**

#### **[31 PA. CODE CH. 301]**

#### **Health Maintenance Organizations; Quality Health Care Accountability and Protection**

This statement of policy is adopted under the authority of the Health Maintenance Organization Act (HMO Act) (40 P. S. §§ 1551—1568), section 630 of the Insurance

Company Law of 1921, the Accident and Health Filing Reform Act (AHFRA) (40 P. S. §§ 3801—3815) and Article XXI of the Insurance Company Law of 1929 (40 P. S. §§ 991.2101—991.2193) (Act 68). Specifically, the Insurance Commissioner's (Commissioner) authority to review HMO contracts is set forth in section 8 of the HMO Act (40 P. S. § 1558); the Commissioner's authority to review subscriber contracts and other marketing materials for HMOs and Gatekeeper PPOs is set forth in section 3 of AHFRA (40 P. S. § 3803).

#### *Introduction*

The Insurance Department (Department) has adopted amendments to Chapter 301 (relating to health maintenance organizations) as set forth in Annex A, regarding the implementation of the quality health care accountability and protection provisions of Act 68. This statement of policy sets forth guidelines for compliance with the provisions of Act 68 with respect to "managed care plans," as that term is defined under Act 68. These guidelines apply to those provisions of Act 68 which vest regulatory authority with the Department.

#### *Applicability*

This statement of policy applies to managed care plans and licensed insurers and addresses the entities' compliance with Act 68 from the Department's regulatory perspective.

#### *Background*

Act 68 was signed into law by the Governor on June 17, 1998. Article XXI, the quality health care accountability and protection provisions, is effective January 1, 1999. This statement of policy is being issued to provide guidance to managed care plans and licensed insurers, on an interim basis, to effectively implement Act 68. The Department intends to promulgate regulations in 1999. However, with the short time available prior to the effective date of the statutory provisions, a statement of policy will provide guidance to affected entities while regulations are reviewed in accordance with the Regulatory Review Act (71 P. S. §§ 745.1—745.15).

#### *Purpose and Effect*

This statement of policy outlines the guidelines the Department will use when reviewing policy form filings, including subscriber contracts and marketing material, to ensure compliance with Act 68. This statement of policy also offers guidance to managed care plans and licensed insurers on issues related to the implementation of Act 68.

This statement of policy provides guidance only, and does not constitute a rule or regulation entitled to the force and effect of law.

#### *Companion Statement of Policy*

This statement of policy is issued in conjunction with a companion statement of policy issued by the Department of Health. (*Editor's Note:* See 28 Pa.B. 5011 (October 3, 1998).) Managed care plans covered by Act 68 are subject to regulation by both the Department of Health and the Department. Accordingly, both statements of policy must be consulted to gain a clear understanding of the implementation requirements for managed care plans under Act 68.

#### *Fiscal Impact and Paperwork Requirements*

Adoption of this statement of policy, consistent with the mandates of Act 68, may result in additional costs and paperwork for the Commonwealth, managed care plans and licensed insurers. However, these guidelines are

necessary for the Department to effectively implement, and for managed care plans and licensed insurers to comply with, Act 68. Costs to the Commonwealth are not expected to be significant.

#### *Contact Person*

Questions relating to this statement of policy may be directed to Geoffrey Dunaway, Director, Accident and Health Bureau, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120, (717) 787-4192.

#### *Effective Date/Sunset Date*

This statement of policy is effective January 1, 1999. Upon promulgation of regulations as described in the Preamble, this statement of policy will be rescinded.

M. DIANE KOKEN,  
Insurance Commissioner

(Editor's Note: The regulations of the Department, 31 Pa. Code Chapter 301, are amended by adding a statement of policy in §§ 301.401—301.403 and 301.411—301.416 (relating to quality health care accountability and protection) to read as set forth in Annex A.)

**Fiscal Note:** 11-191. No fiscal impact; (8) recommends adoption.

### **Annex A**

#### **TITLE 31. INSURANCE**

#### **PART X. HEALTH MAINTENANCE ORGANIZATIONS**

#### **CHAPTER 301. HEALTH MAINTENANCE ORGANIZATIONS**

#### **Subchapter J. QUALITY HEALTH CARE ACCOUNTABILITY AND PROTECTION—STATEMENT OF POLICY GENERAL PROVISIONS**

Sec.

301.401. Definitions.

301.402. Applicability and purpose.

301.403. Changes, modifications and disclosures.

#### **REQUIRED PROVISIONS AND ENROLLEE DISCLOSURES**

301.411. Managed care plan requirements.

301.412. Emergency services.

301.413. Continuity of care.

301.414. Information for enrollees.

301.415. Complaints and grievances.

301.416. Prompt payment.

#### **GENERAL PROVISIONS**

#### **§ 301.401. Definitions.**

(a) For the purpose of this subchapter, the definitions in section 2102 of the Insurance Company Law of 1921 (40 P. S. § 991.2102), as added by the act are incorporated herein by reference as if set forth in their entirety.

(b) As used in this subchapter, the term "act" refers to Article XXI of the Insurance Company Law of 1921 (40 P. S. §§ 991.2101—991.2193), as added by the act of July 17, 1998 (P. L. 464, No. 68).

#### **§ 301.402. Applicability and purpose.**

(a) This subchapter is effective January 1, 1999, and applies and provides compliance guidance to assist managed care plans and licensed insurers subject to the act.

(b) The terms and conditions of group and individual contract renewals and new business written by managed care plans on or after January 1, 1999, shall conform to the act.

(c) This subchapter applies to products issued by a managed care plan which partially insure an entity's risk, including those products which are known as "cost plus" or their equivalent.

(d) This subchapter does not apply to managed care plans that do not meet the statutory definition of "managed care plan" specified in section 2102 of the act (40 P. S. § 991.2102). The Department and the Department of Health have determined that managed care plans utilizing a passive gatekeeper structure, whereby an enrollee needs a referral from a primary care provider in the network, rather than from a preselected primary care provider, before receiving specialty care, will not be considered managed care plans for purposes of implementation of the act.

#### **§ 301.403. Changes, modifications and disclosures.**

(a) Managed care plans and licensed insurers may implement changes, modifications and disclosures to subscriber and other contracts and marketing materials, as required under the act, in several different ways including, contract endorsements, contract amendments and modification to the contract then in effect.

(b) Managed care plans will be given reasonable discretion with respect to the precise manner in which the managed care plans modify their contracts and other documents to comply with the act. The Department will review all managed care plan documents within its regulatory authority intended to address the changes required by the act.

(c) Licensed insurers performing utilization review services for or on behalf of managed care plans within this Commonwealth shall file with the Department of Health evidence of compliance with the standards and procedures in section 2152 of the act (40 P. S. § 991.2152) at the same time as the annual statement filing to the Department, beginning with annual statements for Fiscal Year 1999.

#### **REQUIRED PROVISIONS AND ENROLLEE DISCLOSURES**

#### **§ 301.411. Managed care plan requirements.**

Section 2111(13) of the act (40 P. S. § 991.2111(13)) requires managed care plans to report specific information to the Department of Health and the Department with respect to the number, type and disposition of complaints and grievances filed with the managed care plan. Managed care plans currently report this type of information to the Department of Health with respect to grievances. The Departments will accept the information required by the act from managed care plans based on the current format utilized to report grievance information.

#### **§ 301.412. Emergency services.**

(a) For purposes of clarification, the sections of the act which apply to emergency services are:

(1) Section 2102 of the act (40 P. S. § 991.2102) which defines "emergency service."

(2) Section 2116 of the act (40 P. S. § 991.2116) which establishes the parameters for the appropriate provision of, and payment by managed care plans for, emergency services rendered to enrollees by emergency health care providers.

(3) Section 2136(a) of the act (40 P. S. § 991.2136(a)) which establishes the requirement that certain written

disclosures be provided to enrollees, and on written request, to prospective enrollees and health care providers.

(4) Section 2136(a)(9) of the act which sets forth the disclosure requirements with respect to managed care plans' procedures for providing emergency services.

(b) The definition of "emergency service," as provided in section 2102 of the act, and the written disclosures referenced in subsection (a), should be incorporated into subscriber and master group contracts and, beginning January 1, 1999, in all other appropriate documents, including marketing materials.

#### § 301.413. Continuity of care.

(a) *Continuity of care.*

(1) Section 2117 of the act (40 P. S. § 991.2117) provides for continuity of care for enrollees when one of the following applies:

(i) A managed care plan terminates a contract with a participating provider.

(ii) A managed care plan terminates a contract with a participating provider for cause (in which case continuity of care is not required).

(iii) A new enrollee enters a managed care plan and is currently in an ongoing course of treatment with a nonparticipating provider.

(2) Continuity of care is at the option of the enrollee.

(b) *Continuation of ongoing treatment.* Section 2117(a) of the act allows an enrollee to continue an ongoing course of treatment with a provider whose contract has been terminated for reasons other than cause. Section 2117(d) allows new enrollees to continue an ongoing course of treatment with a nonparticipating provider when joining a new managed care plan. Health care services provided under these provisions shall, by statute, be "covered by the managed care plan under the same terms and conditions as applicable for participating health care providers." The Department interprets these requirements to require nonparticipating and terminated providers who agree to continue to provide care to an enrollee to accept the terms applicable to participating providers, including, prohibitions on balance billing and agreements to hold enrollees harmless for moneys which may be owed by the managed care plan to the provider.

(c) *Written disclosure.* Written disclosure of the continuity of care benefit requirements imposed under the act should be incorporated into the subscriber and master group contracts and all other appropriate documents, including marketing materials.

#### § 301.414. Information for enrollees.

(a) Section 2136(a) of the act (40 P. S. § 991.2136(a)) sets forth an extensive list of written information required to be provided to enrollees and, on written request, to prospective enrollees and health care providers. Managed care plans may select the format for disclosure of required information. If the information is disclosed through these materials as subscriber contracts, schedules of benefits and enrollee handbooks, the information should be easily identified within the materials provided.

(b) For the purposes of section 2136 of the act, the Department has determined that the definition of "prospective enrollee" varies based on whether the coverage is offered on a group or individual basis. Accordingly:

(1) For group policies, prospective enrollees are those persons that are eligible for coverage under a specific

group as either a subscriber or dependent. In the case of group policies, the distribution of information to prospective enrollees should be coordinated between the managed care plan and the group policyholder, with the group policyholder ordinarily handling the distribution of written materials supplied by the managed care plan. In those instances in which the group policyholder communicates to the managed care plan that it will not coordinate the distribution of information, the managed care plan should supply the information directly to prospective enrollees.

(2) For individual policies, a prospective enrollee is any person who meets the eligibility requirements of the managed care plan. In the case of potential individual coverage, the managed care plan is responsible for providing the required information to a prospective enrollee.

(c) The disclosure of information required by section 2136(a) of the act to enrollees, prospective enrollees and health care providers should be provided as follows:

(1) During open enrollment periods, including those which may occur prior to January 1, 1999, managed care plans may disclose summary information to enrollees and prospective enrollees. If the information does not include all the information required by section 2136(a) of the act, the managed care plan should simultaneously provide the enrollees and prospective enrollees (either directly or through the group policyholder) with a list of all other information which is required by this section but that has not been included with the open enrollment information. This information should also be available to enrollees and prospective enrollees upon request.

(2) Disclosure of information required by section 2136(a) of the act to enrollees following initial enrollment or upon renewal should be made within a reasonable period of time after the effective date, renewal date of coverage or the date of request for the information.

(3) Disclosure of information required by section 2136(a) of the act to health care providers should be made within a reasonable period of time from the date of request for the information.

(d) The act requires certain disclosures of information to enrollees, and, on written request, to prospective enrollees and health care providers, and that the disclosures are easily understandable by the layperson and include:

(1) The information specified in section 2136(a)(1)–(15) of the act.

(2) The information covered under section 2113(d)(2) of the act (40 P. S. § 991.2113(d)(2)), if applicable. If applicable, managed care plans shall disclose in their subscriber contracts, schedule of benefits and other appropriate material when the managed care plan does not provide, reimburse for or cover counseling, referral or other health care services due to a managed care plan's objections to the provision of the services on moral or religious grounds.

(3) The specified disclosure statement required by section 2136(a)(1) of the act. Subscriber and group master contracts and riders, amendments and endorsements, will not be considered to constitute marketing materials subject to the specified disclosure statement.

(e) For the purposes of section 2136 of the act, the information that shall be disclosed to enrollees will ordinarily be provided to the enrollee by the managed care plan. However, this information may also be provided to enrollees by the group policyholder or other designated entity.

(f) The act requires that managed care plans, on written request of enrollees or prospective enrollees, provide written information, which should be easily understandable by the layperson, as follows:

(1) The information specified in section 2136(b)(1)—(9) of the act.

(2) Other information, as required by the Department or the Department of Health, under section 2136(b)(10) of the act.

#### **§ 301.415. Complaints and grievances.**

(a) Section 2102 of act (40 P. S. § 991.2102) defines "complaints" and "grievances."

(b) The Department and the Department of Health have determined that the "complaint process" includes issues of contract exclusions and noncovered benefit disputes and the "grievance" process includes review of the medical necessity and appropriateness of services otherwise covered by the managed care plan. Examples of complaints to be filed with the Department include:

(1) Denial of payment by the plan based upon contractual limitation rather than on medical necessity, for example, denial of payment for a visit by an enrollee on the basis that the enrollee failed to meet the contractual requirement of obtaining a referral from a primary care provider.

(2) Failure of a plan to approve a standing referral to a specialist or to designate a specialist to serve as an enrollee's primary care provider for an enrollee with a life-threatening, degenerative or disabling disease or condition in accordance with the plan's established qualification standards for the referral or designation.

(3) Refusal of the plan to provide, arrange for or pay for a procedure, drug or treatment on the basis that the procedure, drug or treatment is experimental, investigational or a cosmetic service excluded under the contract's provisions.

(4) Upon a determination by the enrollee's primary care provider that a referral is medically necessary and appropriate, a restriction on the enrollee's ability to obtain a referral to a participating specialist or provider of the enrollee's choice, unless the restriction is clearly disclosed in the provider directory or other written materials provided to the enrollee.

(5) A dispute involving a noncovered benefit or contract exclusion—for example, a request for additional physical therapy services, even if medically necessary, beyond the number specified in the enrollee contract.

(6) Problems relating to:

(i) Coordination of benefits.

(ii) Subrogation.

(iii) Conversion coverage.

(iv) Alleged nonpayment of premium.

(v) Dependent coverage.

(vi) Involuntary disenrollment.

(c) Section 2141 of the act (40 P. S. § 991.2141) establishes an internal complaint process to be followed by managed care plans.

(d) Section 2141(c)(4) requires the managed care plan to notify the enrollee within 5 business days of the rendering of a decision by the second level complaint review committee, including the basis for the decision and

the procedure for appealing the decision to the Department or the Department of Health.

(e) Section 2142 of the act (40 P. S. § 991.2142) establishes an external process for enrollees who wish to appeal the internal complaint decision of the managed care plan to either the Department or the Department of Health, dependent upon the subject matter of the complaint.

(f) Appeals of enrollee complaints to the Department should include information such as:

(1) The enrollee's name, address and daytime phone number.

(2) The enrollee's policy number, identification number and group number (if applicable).

(3) A copy of the complaint submitted to the managed care plan.

(4) The reasons for appealing the managed care plan's decision.

(5) Correspondence and decisions from the managed care plan regarding the complaint.

(g) If the Department believes that the appeal more appropriately relates to issues and matters under the jurisdiction of the Department of Health—for example, an issue involving quality of care, the Department will notify the enrollee in writing of its finding and promptly transmit the appeal to the Department of Health for consideration. The original submission date of the appeal will be utilized to determine compliance with the filing time frame provided for in section 2142(a) of the act (40 P. S. § 991.2142(a)).

(h) Section 2161 of the act (40 P. S. § 991.2161) establishes an internal grievance process to be followed by managed care plans.

(i) Section 2162 of the act (40 P. S. § 991.2162) establishes an external process for enrollees and, under certain circumstances, providers, who wish to appeal the internal grievance decision of the managed care plan. Regulatory oversight for the external grievance process lies with the Department of Health.

(j) The Department and the Department of Health intend to continue the joint regulation of complaints which is currently in place. The Department's focus is to review cases which concern the potential violation of insurance statutes, including, those that fall under the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15). The Department of Health will focus on complaint issues primarily involving enrollee quality of care and quality of service.

(k) Complaint appeals can be filed with the Department at the following address:

Pennsylvania Insurance Department  
Bureau of Consumer Services  
1321 Strawberry Square  
Harrisburg, Pennsylvania 17120

(l) Complaints and grievances that were filed with either the Department or Department of Health prior to January 1, 1999, will be reviewed and resolved under the system in place at the time the complaints and grievances were filed. Complaints and grievances filed on or after January 1, 1999, will be reviewed based on the contract provisions in effect on the date the complaint or grievance is filed.

**§ 301.416. Prompt payment.**

(a) Section 2166 of the act (40 P. S. § 991.2166) applies to licensed insurers and managed care plans. Although the Blue Cross and Blue Shield plans have not historically been defined as a "licensed insurer," the Blue Cross and Blue Shield plans will utilize the standards of section 2166 of the act regarding prompt payment.

(b) Section 2166 of the act requires that licensed insurers and managed care plans pay "clean claims," as defined in section 2102 of the act (40 P. S. § 991.2102), within 45 days of the licensed insurer's or managed care plan's receipt of the clean claim from the health care provider. The Department has determined that a claim is determined to have been "paid" on either the date:

(1) A check is issued by the licensed insurer or managed care plan to the provider.

(2) An electronic transfer of funds from the licensed insurer or managed care plan to the provider occurs.

(c) The act does not expressly require that licensed insurers or managed care plans notify health care providers if a claim is determined by the licensed insurer or managed care plan to be incomplete or to be other than a clean claim as defined by the statute. The Department strongly encourages licensed insurers and managed care plans to notify health care providers when claims are incomplete or determined by the licensed insurer or managed care plan to be other than a clean claim.

(d) Prior to filing a complaint with the Department, providers who believe that a licensed insurer or managed care plan has not paid a clean claim in accordance with the act should first contact the licensed insurer or managed care plan to determine the status of the claim, to ensure that sufficient documentation supporting the claim has been provided, and to determine whether the claim is considered by the licensed insurer or the managed care plan to be a clean claim.

(e) Complaints to the Department regarding the prompt payment of claims by a licensed insurer or managed care plan under the act should contain information such as:

(1) The provider's name, address and daytime phone number.

(2) The name of the licensed insurer or managed care plan.

(3) The dates of service and the dates the claims were filed with the licensed insurer or managed care plan.

(4) Relevant correspondence between the provider and the licensed insurer or managed care plan, including requests for additional information from the licensed insurer or managed care plan.

(5) Additional information which the provider believes would be of assistance in the Department's review.

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